

THE
WORKS

Of the Eminent and Learned

JUDGE JENKINS

UPON

Divers Statutes Concerning the
King's Prerogative and the Liberty of
the Subject.

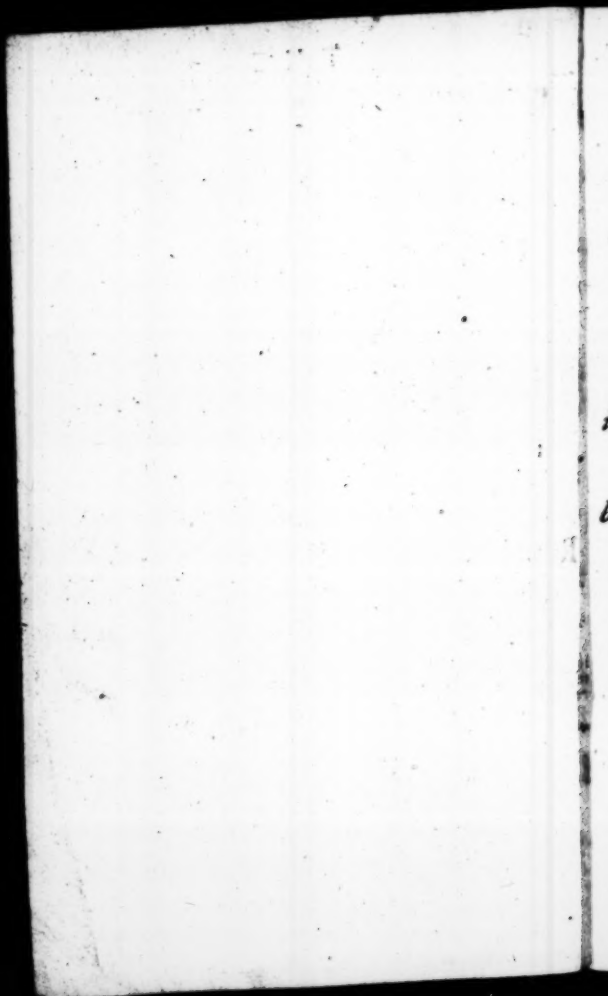
NOW

Reprinted from the Original Au-
thentick Copy, Written and Published
by himself, when Prisoner in *Newgate*.

Plebs sine Lege Ruit.

L O N D O N,

Printed by Samuel Roycroft, for Samuel
Heyrick, at *Graves-Inn-Gate* in *Hol-
borne*.



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The Law of the Land.

THE Law of the Land hath for its ground:

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The Kings Prerogative, and the Subjects Liberty, are determined and bounded by the Law. 61.

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The Law the only Rule and Direction of the Subject in this present war. 22, 23. 51.

ubi Lex non distinguit, ibi non est distinguendum. 161.

The King.

The King of England hath his Title to the Crown, and to his Kingly Office and Power, not by way of trust, from the two Houses of Parliament or from the people, but by inherent birth-right from God, Nature and the Law. 11, 12. 20. 28, 29.

There was never King Deposed, but in tumultuous and mad times, and by the power of the Armies, and they who are to be the succeeding K in the head of them, as Ed 3. and H. 4. 29.

Usurpers were Kings *de facto*, not *de jure*. 29.

The King is assisted by the advice of the Judges, his Council of Law, Solicitor, Attorney, Masters of Chancery, and Council of State, hence the Law hath settled several Powers in the King. 13, 14.

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The King can do no wrong, but his Judges, Councillors, and Ministers may.	8.22.
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Treason.

In the Reign of *Ed.2.* the *Spencers*, the Father and the Son cover their Treason hatched in their hearts, invented this damnable and damned opinion, that Homage and Oath of Allegiance was more by reason of the Kings Crown (that is his politick capacity) than by reason of his person; upon which opinion they inferred three execrable and detestable consequences.

First, if the K. do not demean himself, by reason in the right of his Crown, his Leiges are bound by Oath to remove the K.

Secondly, seeing the King could not be reformed by suit Law, that ought to be done *per asperum*, that is by force.

Thirdly

The Table.

Thirdly, his Leiges be bound to Govern in aid of him, an
in default of him. 9.70.

Several Treasons by the Statute 25 Ed.3. 5.38,39.

The word King in the 25 Ed.3. must be understood of the
Kings natural person. 4.5.39.

Other Treasons not specified in that Act are declared to be no
Treasons, untill the King and his P. shall declare otherwise. 39.

To seize the K. Forts, Ports, Magazine of War is High T. 4.5.

To remove Councillors by Arms is high Treason. 11.21.

To levy War, to alter Religion is high Treason. *ibid.*

To levy war to alter the Law, is high Treason. 4.5.21.

To counterfeit the Greal Seal, is high Treason. 20.

To adhere to any State within the Kingdom, but the Kings
Majesty, is high Treason. 12.21.

To imprison the King untill he agree to certain demands, is
high Treason. 4.11.41.

To imprison the King on purpose to destroy him. 77.

Deposers of the K. adjudged Traitors by the L. of the L. 29.

A Body Corporate cannot commit T. but the persons can. 7.

Noble men committing T. forfeit their Office & Dignity. 67.

Treason how punished by the Law. 22.

Treason doth ever produce fatal destruction to the Offend-
er, and never attains to the desired end: and there are two in-
cidents inseperable thereunto. 63.

A Parliament.

The word Parliament cometh from the French word, *Parler*
to Treat. 46.

The King is *Principium, Caput, & Finis*, parl. 13.

The King assembles the Parliament by his Writ, Adjournes,
prorogues and dissolves the P. by the Law, at his pleasure. 31.

The Writ whereby the K. assembled the 2 Houses, which is
called the Writ of Summons, at all times, & at this P. used, and
which is the Warrant, ground, & foundation of their meeting, is,
for the Lords of the House of Peers, to Consult and treat with
the K. (that is the *Parler*) of great Concernments, touching;

1. The King.

2. The defence of this Kingdom.

3. The defence of the Church of England.

12, 13. 45.

The Table.

Council is not Command, Councillors are not Commanders. 13.

The writ of summoning the Judges Council of Law, and 12 Masters of Chancery, is to appear, and attend the Parliament, to give Council. *ibid.*

The writ of summoning the Commons, is to do, and consent to such things, which shall happen to be ordained by Common Council there (*viz.*) in the Parliament. *ibid.*

The Parliament is a Corporation composed of the King the head, and the Lords and Commons, the Subject body. 13. 45. 46.

And it hath power over our lives, liberties, law, and goods. 53.

The Court of Parliament is only in the House of Lords, where the King sits in person. 36.

The Office of the Lords, is to Council the King in time of Peace, and to defend him in time of War. 17.

It belongs to the House of Lords, to reform erroneous Judgments given in the Kings bench, or redress the delays of Courts of Justice, to receive all Petitions, to advise his Majesty with their Council, to have their Votes in Voting, or abrogating of Laws, and to propose for the Common good, what they conceive meet. *ibid.*

How Errors in Judgment are reversed by the House of Lords. 29, 30.

At a Conference the Commons are always uncovered and stand, when the Lords sit with their hats on; which shews that they are not Colleagues in Judgment with the Lords. 69.

Every member of the House of Commons takes the Oath of allegiance and Supremacy before his admission into the H. 37.

Briberies, Extortions, Monopolies, ought to be enquired after by the House of Commons, and complained of to the King and Lords. 67.

It belongs to the House of Commons to represent the Grievances of the Countrey, to grant Aids for the King, upon all fit occasions extraordinary, to assent to the making of or abrogating laws. 69.

It is the use making of new, and abrogating of old laws both induce Novelties: And because Bills in both Houses may pass, but by one or two voices, or very few, and perhaps of no judicious men (who often times carry it by making the Major part, which

which involves the consent of all) therefore the law makes the King assisted therein, by a great number of grave, learned, and prudent men, the Judge of those bills, whether they be necessary for the publick good or no. 13. 14. 28.

And the King upon all Bills, hath the liberty of assenting or dissenting. 8.

And in case the Kings Minority, the protector hath a liberty, and negative voice in respect of the King. 28.

The Styles of the Acts printed from 9 H. 3. to 1 H. 7. were either the King Ordains at his Parliament, &c. Or the King ordaineth by the advice of his Prelates and Barons, and at the humble petition of the Commons, &c.

In H. 7. time the style was altered, and hath so continued to this day. 39.

No Act of Parliament binds the Subject, without the assent of the King. *ibid.*

When an Act of Parliament is against Common Right, or Reason, or repugnant or impossible to be performed, the Common Law shall controule it, and adjudge it to be void. And such is an Act for a perpetual Parliament. 69.

An Act of Parliament that a man shall be Judge in his own cause, is a void Act. *ibid.*

An Adjournment of the Parliament makes no Session. 64.

There is no Session till a prorogation, or dissolution of the parliament. *ibid.*

All the Acts of one Session relate to the first day of the Parliament. *ibid.*

The two Houses ought to take care of the preservation of the Kings person. 8.

The Lords and C. cannot assent to any thing that tends to the disinherison of the K. & his C. to which they are sworn. 4.

The two Houses ought not to meddle with the K. Revenue. *ib.*

Arms are not to be born in London or Westminster in time of Parliament. 3. 21.

The Priviledge of Parliament protects no man in case of Treason or Felony. *ibid.*

Parliaments are as the times are: if a turbulent rage on prevailles, the Parliament are wicked, if the times be sober, modest, prudent and not biased, the Parliament are right, good, honorable, & good Medicines and Salves. 22.

The present Parliament.

This Parliament began 3 Novem. 1640. and in the beginning thereof the King acquitted the *Ship Money*, Knighthood-mony, seven Court- of Justice consented to a Triennial Parliament, settled the Forrest Bounds, took away the Clerk of the Market, of the Household, trusted the Houses with the Navy, passed an Act not to dissolve this Parliament without the Houses assent: No People in the World so free, if they could have been contented with Laws, Oaths, and Reason, and nothing more could, nor can be devised to serve us, neither hath been in any time before.

17. 18.

Notwithstanding all this (Jan. 10. 1641.) the King was driven away from London, by frequent Tumults, and two thirds and more of the Lords had deserted that House, for the same cause, and the greater part of the House of Commons, left that House also for the same reason: new men chosen in their places, against Law, by the pretended Warrant of a counterfeit Seal, and in the Kings name, against his consent, levying War against him, and seizing his Forts, Ports, Magazines, and Revenue, & converting them to his destruction, and the subversion of the Law, and Land, levying taxes on the People, never heard of before in this Land, devising new Oaths to oppose the forces raised by the King, &c.

18.

From the 3 Nov. 1640. unto Jan. 10. 1641. they had time to prosecute all evil Councillors and Judges.

22.

From that time the King was driven away, the two Houses stood in opposition to the King and his Power.

18.

This became no Parliament when the King, with whom they should parley, was driven away, and it continues so, whilst his Majesty is restrained as a Prisoner.

46.

And the Houses now severed from the King have no power at all, no more than the body hath, being severed from the head

ibid.

The 2 Houses do not now act by the K. Writ, but contrary to it. Their Acts are Null.

18. 64, 64.

The Act for continuing this Parliament, so long as both Houses please, is void, because it is,

1. Against Common right, for thereby the Parliament men

will

will not pay their debts : And they may do wrong to other men *Impune*: besides the utter destruction of all mens actions, who have to do with Parliament men, by the Statute of Limitation, 21. *Jacob*.

2. Against common reason, for Parliaments were made to redress publick Grievances, not to make them.

3. Impossible, the Death of his Majesty (whom God long preserve) dissolving it necessarily.

4. Repugnant to the Act for a Triennial Parliament, and to the Act for holding a Parliament once a year. 64.65

The end of continuing this Parliament was to raise credit for Money; for three purposes: And three ends of the Act being determined, it agreeth with Law and Reason, the Act should end. 66.

A perpetual Parliament (besides that it incites men to self ends) will be a constant charge to the Kingdom, by reason of the wages of Parliament men. *ibid.*

Mischiefs by the length of Parliaments. *ibid.*

Certain Erroneous Positions and Proceedings of both Houses of Parliament discovered and confuted.

The two Houses without the King are not the Parliament, but only parts thereof: and by the abuse, and misunderstanding of this word *Parliament* they have miserably deceived the People. 45.72.

The King is not virtually in the two Houses. 5.9.10.57.

The two Houses are not above the King, but the King is Superior to them. 4.8.62.

The Tenents of the *Spencers*, are the ground of their proceedings. 4.

And upon their pretenses, they take upon them the Government at this time.

They have destroyed above 100. Acts of Parliament (even all concerning the King, the Church and Church Men) and in effect *Magna Charta*, and *Charta de Foresta*, which are the Common Laws of the Land. 71.

They have fifteen several illegal ways raised Money upon the Subject this present Parliament. 18.

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There is no crime from Treason to Trespafs, but they are guilty of. 66.

They are not to be Judges in their own cause. 7.

Of their League and Covenant with the Scots. 74.

The two Houses by the Law of this Land, have no colour of power, to make Delinquents or pardon Delinquents, the King contradicting. 54.

Certain Erroneous Positions and Proceedings in the House of Commons discovered and confuted.

They cannot be Members of the House of Commons, who were not resident in the Counties, or Boroughs for which they were elected, at the time of the Test of the writ of Summons of Parliament. 70.

If any undue return be made, the person returned, is to continue a Member, and the trial of the falsity of the Return, is to be before the Justice of Assize, in the proper County, this condemns the Committee for undue Elections. *ibid.*

The House of Commons cannot Elect, and Return Members of that House. 68.

The ejecting of a Member that hath sitten, is against Law, also their new elections are against Law. And by this it may be judged, what a House of Commons we have. 70.

Breaches of Priviledges of Parliament may be punishable in other Courts. And what need then of a Committee for Priviledges. *ibid.*

The House of Commons by their writ have no seperate power given them over the Kings People. 68.

The House of Commons cannot Imprison any who are not their Member, or Disturbers of their Members in the service of the Parliament. 68, 69.

The House of Commons, no Court, &c. *ibid.*

The proposition sent by the Parliaments of both Kingdoms to his Majesty at New-Castle.

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For disabling the King to pardon. 6.

For

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For sale of the Bishops Lands.	19.
For taking away the Book of Common Prayer.	<i>ibid.</i>
For taking from his Majesty all the power by Land Sea.	20.
For laying upon the people what Taxes they shall think meet.	63.

Besides in their propositions they do not stile themselves his Majesties Subjects. 66.

The Kings party. 19. 20.

The Subjects are commanded by Law to assist the King in War. *ibid.*

Those who adhere to the King are freed by the Statute of the 11 H. 7. 8.

Mr Prin's objections against the King and his party answered. 23, & 6.

The Parliaments party are Delinquents.

A delinquent is he who adheres to the Kings Enemies: this shews who are Delinquents. 2.

The Army serving the Parliament.

The sum of the O. for the Indemnity of the Army. 43. 44.

It can no more free the S. than repeal all the L. of the L. 44.

The J. are sworn to do J. according to the L. of the L. *ibid.*

An Act of Oblivion, and a general pardon the only means to indemnify the Army and the whole Kingdom. 47.

And the conclusion of all the other Books.

The Army Rescuing the King.

To deliver the King out of Trayterous hands is our bounden duty by the Law of God and the Land, 72.

By the Law of the Land, when Treason, or Felony is committed, it is lawful, for every Subject, who respect the Offendor, to apprehend him, so that Justice may be done upon him, according to Law. 73.

As the Army hath power, so adhering to the King, all the Laws of God, Nature, and man are for them. 72.

None by the L. of the L. can in this K. have an A. but the K. 17.

The Liberty of the Subject.

Our Liberties were allowed in the 17 of K. John, & confirm'd in the 9th. of H. 3. and are called M.C. and C. de Foresta. B.

Magna Charta is irrepealable.

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Of <i>7th Cade</i>	75.
Treasons, Murders, Felonies, and Capital Crimes to be tried by Juries, & not otherwise, but by Act of Parliament.	52.
The Chancellors or Keepers Oath.	81.
The present Commissioners have no Court Seal, nor Commission.	82.
The King, the Laws and Kingdom cannot be severed.	
The only quarrel was for the <i>Militia</i> , which the Laws have ever settled upon the King.	83.
No peace can possibly be had without the King.	<i>ibid.</i>
No man can devise Lands till he be 21. years of age.	85.
An Infant of 17 years of age may dispose of goods by will by the opinion of some, but by others not till 18.	<i>ibid.</i> 86.
The Court of Wards had no jurisdiction over the personal estate.	87.
Peace and Plenty abounded during his Majesties G.	89.
Since the 2. Houses have usurped the power the Kingdom hath been in a sad condition.	90.
Nothing delivered in this Book for Law but what the House of Commons have avowed for Law this Session.	<i>ibid.</i> 90, 91.
The 14 position of Law set out in divers Books by the H. of Commons order.	<i>ibid.</i>
It is honourable to dy for the Law.	93.
Good Council for them if it be taken in time.	94.
That which will save this Land from destruction is an Act of Oblivion, and his Majesties gracious general Pardon, the Souldiers their Arrears, and every man his own, and Truth and peace established in this Land, and a favourable regard had to the satisfaction of tender Consciencs.	
<i>God save the King.</i>	



To the Honourable Societies of
Grays-Inn, and of the rest of the Inns
 of Court, and to all the professors of the
 Law.

I Have now spent Forty five years in the Study of
 the Laws of this Land, being my profession; under
 and by the conduct of which Laws, this Common-
 wealth hath flourished for some Ages past in great
 splendor and happiness. (*Jam seges est ubi Troja fu-*
it.) The great and full body of this Kingdom hath of
 late years fallen into an extream sickness: it is truly
 said, that the cause of the disease being known, the di-
 sease is easily cured. There is none of you, I hope, but
 doth heartily wish the recovery of our common parent;
 our native Countrey (*Moribus antiquis stat res Bri-*
tanica.) I call God to witness that this discourse of mine
 hath no other end than my wishes of the common good:
 how far I have been from Ambition, my life past, and
 your own knowledge of me, can abundantly inform you:
 and many of you well know, that I ever detested the
 Ship-monie and monopolies, and that in the beginning
 of this Parliament for opposing the excess of one of the
 Bishops, I lay under three Excommunications, and the
 examination of seventy seven Articles in the High Com-
 mission Court. His sacred Majesty: (God is my witness)
 made me a Judge in the parts of Wales against my will,
 and all the means I was able to make; and a patent
 for my place was sent me, for the which I have not paid
 one farthing, and the place is of so inconsiderable a bene-
 fit, that it is worth but 80. l. per Annum when paid,
 and it cost me every year I served twice as much out of
 my own estate in the way of an ordinary and frugal
 expence.

To the Reader.

experience. That which gave me comfort was that I knew well that his Majesty was a just and prudent Prince.

In the time of the Attorneyships of Mr. Noy and the Lord Banks, they were pleased to make often use of me, and many references concerning suits at Court upon that occasion came to my knowledge; and as I shall answer to God upon my last account this is truth, that all or most of the references which I have seen in that kind (and I have seen many) were to this effect, that His Majesty would be informed by his Council if the suits preferred were agreeable to the Laws, and not inconvenient to his People, before he would pass them. [What could a just and pious Prince do more?] Gentlemen, you shall find the Cause and the Cure of the present great distemper in this Discourse; and God prosper it in your hands, thoughts, and words, as the case deserves.

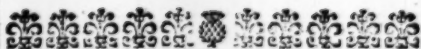
Hold to the Laws, this great body recovers: forsake them, it will certainly perish. I have resolved to render my self a Sacrifice for them as cheerfully, and I hope (by Gods assistance) as constantly as old Eliazar did for the holy Laws of his Nation.

Your Well-Wisher,

DAVID JENKINS,

Now prisoner in the Tower.

LEA



LEX TERRÆ.

THE Law of this Land hath three grounds:
 First, *Customs*. Secondly, *Judicial Records*. Thirdly, *Acts of Parliament*. The two later are but declarations of the *Common-Law* and *Custom* of the Realm, touching *Royal Government*. And this Law of *Royal Government*, is a *Law Fundamental*.

The Government of this Kingdom by a *Royal Sovereign*, hath been as ancient as History is, or the memorial of any time: what power this *Sovereignty* always had and used in War and Peace in this Land, is the scope of this Discourse: that usage so practised, makes therein a *Fundamental Law*; and the *Common Law* of the Land, is *Common Usage*; *Plowdens Commentaries* 195. For the first of our Kings since the Norman Conquest, the first *William*, second *William*, *Henry the first*, *Stephen*, *Henry the Second*, and *Richard the first*, the Customs of the Realm touching *Royal Government* were never questioned: The said Kings enjoyed them in a full measure. In King *John's* time the Nobles and Commons of the Realm conceiving that the ancient Customs and Rights were violated, and thereupon pressing the said King to allow them in the seventeenth of King *John*, the said Liberties were by King *John* allowed, and by his Son *Henry the Third*, after in the ninth year of his Reign confirmed, and are called *Magna Charta*, and *Charta de Foresta*, declared 422. years since by the said Charters.

Now rests to be considered, after the Subjects had

The Kings
 Prerogative is a
 principal
 part of the
 Common
 Law. *Com. Littl.* 344.
 27 H. 8.
Stamford
priv. fol. 1.
 2 *Pars inst.*
fol. 496.
 3 *Pars inst.*
pag. 84.

had obtained their Rights and Liberties, which were no other than their ancient Customs, (and the fundamental Rights of the King as Sovereign are no other,) How the Rights of Sovereignty continued in practice from Henry the Third's time until this present Parliament of the third of November, 1640. For before Henry the Third's time, the Sovereign had a very full power.

Brac. temp. H. 3 l. 4. c. 24. §. 1. *Rex habet Potestatem & jurisdictionem super omnes qui in Regno suosunt, ea que sunt jurisdictionis & pacis ad nullum pertinent nisi ad Regiam dignitatem, habet etiam coercionem, ut Delinquentes puniat & coerceat :* This proves where the supreme power is.

A Delinquent is he who adheres to the King's Enemies *Com. Sur. Littl. 261.* This shews who are Delinquent.

§. 4. Bract. ibid.

Omnis sub Rege, & ipse sub nullo nisi tantum Deo, non est inferior sibi subiectis, non parem habet in Regno suo. This shews where the supreme power is.

Bract. l. 4. tract. 3. de delictis cap. 3. Bract. l. 5. c. 7.

Rex non habet superiorem nisi Deum, satis habet ad panem quod Deum expectat ultorem. This shews where the supreme power is.

Treasons, Felonies, and other Pleas of the Crown are *Propria causa Regis :* This shews the same power.

By these passages it doth appear what the Custom was for the power of Sovereignty before that time, the power of the Militia, of coining of Money, of making Leagues with forraign Princes, the power of pardoning, of making of Officers, &c. All K. had them, the said Powers have no beginning.

Sexto Edw. 1. Com. Sur. Littl. 85. Liege-Homage, every Subject owes to the King; *viz.* Faith *de Membro, de vita, de terreno honore;* the form of the Oath, *inter vetera Statuta,* is set down. We read of no such, or any Homage made to the two Houses, but frequently of such made by them.

Edward. 1. 7 Ed. 1. It is declared by the Prelates, Earls, Barons and Statutes at large, *f. 42.* Commonality of the Realm, that it belongeth to the King

King and his Royal Seigniorie, straitly to defend force of Armour, and all other force against the King, at all times when it shall please him, and to punish them that shall do contrary according to the Law and Usage of the Realm, and hereunto they are bound to aid their Sovereign Lord, at all seasons when need shall be. Here the supreme power, in the time of Parliament, by both Houses is declared to belong unto the King.

At the beginning of every Parliament. all Arms are or ought to be forbidden to be born in *London, Westminster* or the Subburbs. This condemns the multitudes coming to *Westminster*, and the Guards of armed men. 7 Ed. 2. 4. pars inst. 14

All who held by Knights service, and had twenty pounds *per annum*, were distrainable *ad Arma militaria suscipienda*: This agrees with the Records of ancient time, continued constantly in all Kings times but at this Parliament 3. November 1540. the King out of his grace discharged this duty, which proves that the power of war, and preparation thereto, belongs not to the two Houses, but only to the King. 1 Ed. 2. de Militibus.

The two *Spencers* in Ed. the 2. time hatched (to cover their treason) this damnable and damned opinion (*viz.* That Leigeance was more by reason of the Kings politic capacity then of his person; upon which they inferred these execrable and detestable consequences. First, if the King demeaned not himself by reason in the right of his Crown, his Lieges are bound by Oath to remove him. Secondly, seeing the King could not be removed by suit of Law, it was to be done by force. Thirdly, that his Lieges be bound to govern in default of him. Ed. 2. Calvinus Cast, Co. Lit. 7 f. 11.

All which tenets were condemned by two Parliaments, the one called *exilium Hugonis* in Ed. 2. times; the other by 1 Ed. 3. c. 2. All which Articles against the *Spencers* are confirmed by this last statute, the Articles are extant in the book called *vetera Statuta*. The separation of the Kings Person from his power,

power, is the principal Article condemned, and yet all these three damnable, detestable, and execrable consequences, are the grounds whereupon this present time relies, and the principles whereupon the two Houses found their cause.

Plowden.
com. 322.
27. ass. pl.
49.

The villein of a Lord in the presence of the K. cannot be seised; for the presence of a King is a protection for that time to him: This shews what reverence the Law gives to the person of a King.

Reges sacro alio uncti sunt capaces spiritualis jurisdictionis: But the two Houses were never held capable of that power.

33 Ed. 3.
ayd. de roy.
103. Fitz.
10 H. 7. 16
Com. SUR.
Littl. §. 4.

Rex est persona mixta cum sacerdote, habet Ecclesiasticam & spirituales jurisdictionem: This shews the Kings power in Ecclesiastical Causes.

The Lands of the King is called in Law *Patrimonium sacrum*; The Houses should not have meddled with that sacred Patrimony.

3 Ed. 3. 9.

The King hath no Peer in his Land, and cannot be judged: *Ergo* the two Houses are not above him.

The Parliament 15 Ed. 3. was repealed, for that it was against the Kings Laws and Prerogative. 4. p. inst. f. 52. This shews clearly the Propositions sent to Newcastle, ought not to have been presented to his Majesty, for that they are contrary to the Laws and his Prerogative.

4 Part Cook
Inst. f. 14.
42 E. 3.

The Lords and Commons cannot assent in Parliament to any thing that tends to the disinherison of the King and his Crown, to which they are sworn. This condemns the said propositions likewise.

Parl. Rol.
num. 7. Rex
& consue-
tudo Parli-
amenti.

To depose the King, to imprison him untill he assent to certain demands, a war to alter the Religion established by Law, or any other Law, or to remove Councillors, to hold a Castle or Fort against the King, are offences against that Law declared to be treason by the resolutions herein after mentioned; by that Law men are bound to aid the King when

when war is levied against him in his Realm. King in this Stat. must be intended in his natural body & person, that only can die; for to compass his death, and declare it by overt Act, is declared thereby treason; to encounter in fight such as come to aid the King in his Wars, is Treason. 25 Ed. 3. c. 2.

Compassing of the Queens death, of the Kings Eldest Son, To coin his money, To counterfeit his Great Seal, To levy War against him, To adhere to such as shall so do, are declared by that Act to be high-treason. This Statute cannot refer to the King, in his politick capacity, but to his natural, which is inseparable from the politick: for a body politick can have neither Wife, nor Child, nor levy War, nor do any act but by the operation of the natural body. A Corporation or body politick hath no soul or life, but is a fiction of the Law; and the Statute meant not fictitious persons, but the body natural, conjoynd with the politick, which are inseparable. 21 Ed. 4. 14

The clause in that Act, That no man should sue for grace or pardon for any offence condemned, or forfeiture given by that Act, was repealed by a subsequent Act in 21 R. 2. holden unreasonable, without example, and against the Law and Custom of the Parliament. This condemns the Proposition for disabling the King to Pardon. *4. Pars instt. fol. 42.* The Act of 11 R. 2. so much urged by the other side, was an Act to which the King consented, and so a perfect Act: yet Note the Army then about the Town: Note that that Law is against private persons, and by the 3. cap. thereof, the treasons there declared, are declared to be new treasons made by that Act, & not to be drawn to example: it was abrogated 21 R. 2. and revived by an usurper 1 H. 4. to please the people, and by the 10. chap. thereof enacts that nothing shall be treason but what is declared by 25 Ed. 3. R. 2. 11. anno c. 13. 4 Pars instt. fol. 42.

The Regality of the Crown of England, immediately 16 Ed. 3. 16 R. 2. c. 5. H. 4.

diately subject to God, and to none other. Plain words, shewing where the supreme power is.

The Commission of Array is in force, and no other Commission, *Rot. Parl. 5. H. 5. num. 24.* an Act not printed: this Act was repealed by 4. and 5. P. & M. c. 2. this repealed by the Act of 1 Jacobi, and so it is of force at this day, for the repealing Statute is repealed 4. *pars inst. 51. & 125.* published since this Parliament, by the desire of the House of Commons, their Order is Printed in the last leaf of the Commentaries upon *Magna Charta.*

A book allowed by Sir N. Brent called the reason of the war f. 6.5.

Sir Edward Cook by their party is holden for the Oracle of the Law, who wrote the said fourth part, in a calm and quiet time, and I may say, when there was no need to defend the authority of the Commission of Array.

For that objection, that that Commission leave power to the Commissioners to tax men *secundum facultates*, and so make all mens estates Arbitrary: the answer is, that in levying of publick aids upon mens goods and estates, which are variable, and probably cannot be certainly known by any but the owners, it is impossible to avoid discretion in the assessments for so it ever was, and ever will be. By this appears that the Votes of the 2 Houses against the Commission of Array, were against the Law.

H. 5.

The death of the King dissolves the Parliament: if Kings should refer to the politic capacity, it would continue after his death, 4. *pars inst. 46.* which proves that the K. cannot be said to be there when he is absent, as now he is: there is no *interregnum* in the Kingdom; the dissolution of the Parliament by his death, shews that the beginning and end thereof refers to the natural person of the King, and therefore he may lawfully refuse the Propositions.

2 H. 5.

4 *pars inst.* 46.

2 H. 5. c. 6. to the King only it belongs to make Leagues with forreign Princes: this shews where the supreme power is, & to whom the Militia belongs.

H. 6.

8 H. 6. num. 57. *Rot. Parl. Cooks 4. pars inst. 25.* No priviledge

priviledge of Parliament is grantable for treason, felony or breach of the peace; if not to any one Member, nor to two, nor to ten, nor to the Major part, 19 H.6.62. The Law is the inheritance of the King and his people by which they are ruled, King & people; And the people are by the Law bound to aid the King, and the King hath an inheritance to hold Parliaments, and in the aids granted by the Commonalty. If the Major part of a Parliament commit treason, they must not be Judges of it, for no man or body, can be judge in his own cause, and as well as ten or any number may commit treason, the greater number may as well.

The K. by his L.P. may constitute a County palatine, and grant Regal rights: this shews where the supreme power is. 32 H.6.13. Plow. 334.

17. Ed. 4. Rot. Parl. num. 39. No priviledge of Parliament is grantable for treason, felony or breach of the peace, if not for one, not for two, or more, or a Major part. Edw. 4.

The same persons must not be Judge and party. Calv. Case 7 pars f. A corporate body can commit no treason, nor can treason be committed against a corporate body, 21 H. 11.12. Ed. 4. 13. and 14. but the persons of the men who make that body, may commit treason, and commit it against the natural person of him who to some purposes is a body corporate, but *quatenus corporate* no treason can be committed by or against such a body; that body hath no soul, no life, & subsists only by the fiction of the Law, & for that reason the L. doth conclude as aforesaid; therefore the S. of 25 E. 3 Plow. com. must be intended of the K. natural person, conjoynd with the politick, which are inseperable; and the K. 213. natural person being at Holmby, his politick is there also; and not at Westminster; for the politick and natural make one body indivisible. 19 E. 4. 46.

If all the people of Eng. should break the League made with a forraign Prince, without the K. consent, 22. Ed. 4. the League holds, & is not broken; & therefore the Fitz. Jarvis. distinction last representative body is inferior to his M. The placito.

The K. may erect a Court of Common Pleas in what part of the Kingdom he pleaseth, by his Letters Patents: Can the two Houses do the like?

Ed. 5.

1 Ed. 5. f. 2. It cannot be said that the King doth wrong, declared by all the Judges and Serjants at Law then there.

4 Ed. 4. 2. 5

5 Ed. 4. 29.

2 Pars inf.

158.

33.

1 R. 3. c. 13.

H. 7.

11 H. 7. c. 1

12 H. 7. 10.

4 H. 7. 18.

H. 8.

7 H. 7. 14.

The reason is, nothing can be done in this Commonwealth by the K. grant, or any other act of his, as to the Subjects Persons, Goods, Land or Liberties, but must be according to established Laws which the Judges are sworn to observe and deliver between the K. and his people impartially to rich and poor, high and low; and therefore the Justice and the Ministers of Justice are to be questioned & punished if the Laws be violated: and no reflection to be made on the K. All Councillors & Judges for a year and three months, untill the tumults began this Parliament, were all left to the ordinary course of Justice, what hath been done since is notorious.

For great causes and considerations an Act of Parliament was made for the suretie of the said K. person: If P. was so tender of K. R. the 3. the Houses have greater reason to care for the preservation of his Majesty.

The Subjects are bound by their Allegiance to serve the K. for the time being, against every Rebellion, power and might reared against him within this Land, that it is against all Laws, reason and good conscience, if the King should happen to be vanquished, that for the said deed and true duty and allegiance they should suffer in any thing: it is ordained they should not, and all Acts of process of Law hereafter to be made to the contrary are to be void: This Law is to be understood of the natural person of the K. for his politick capacity cannot be vanquished, nor war reared against it.

Relapsers are to have no benefit of this Act.

In no Statute if the King assent not to it and he may dissent; this proves the negative voice.

The

The King hath full power in all causes to do justice to all men; this is affirmed of the King, and not of the two Houses. 24 H. 8. c. 12
25 H. 8. c. 21

The Commons in Parliament acknowledge no Superiour to the King under God, the Houses of Commons confess the King to be above the representative Body of the Realm.

Of good right and equity the whole and sole power of pardoning Treasons, Felonies, &c. belong to the King, as also to make all Justices of Oyre and Terminer, Judges, Justices of the Peace, &c. This Law condemns the practice of both Houses at this time. 27 H. 8. c.
24.
Note.

The Kings Royal Assent to any Act of Parliament signed with his hand, expressed in his Letters Patents under the great Seal, and declared to the Lords and Commons shall be as effectual, as if he assented in his own person; a vain Act if the King be virtually in the Houses. 33 H. 8. c. 12

The King is the Head of the Parliament, the Lords the principal Members of the Body, the Commons the Inferiour Members, and so the Body is composed, therefore there is no more Parliament without a King, then there is a Body without a Head. Dist 38 H.
8. f. 59, 60.

There is a Corporation by the Common Law, as the King, Lords, and Commons, are a Corporation in Parliament, and therefore they are no body without the King. 1, 4 H. 8.
fol. 3.

The death of the King dischargeth all Mainprise to appear in any Court, or to keep the Peace. 34 H. 3. 48
1 Edw. 4. 7.

The death of the King discontinues all Pleas by the Common Law, which agreeth not with the virtual power insisted upon now. 2 H. 4. 8.
1 H. 7. 10.
1 Edw. 5. 1.

Writs are discontinued by the death of the King; Patents of Judges, Commission for Justices of the Peace, Sheriffs, Escheators, determined by his death: Where is the virtual power? 1 Edw. 6.
c. 7.

All authority and jurisdiction spiritual and temporal,

1 Ed. 6. c. 2. *pōral*, is derived from the King, therefore none from the Houses.

2, 7 Ed. 6 c. His Majesties Subjects, according to their bounden duties, ought to serve the King in his Wars, on this side or beyond the Seas: beyond the Seas, *Calvins* Case. *sa* to be understood for wages. This proves the power of Wars, and preparation for War, to be in the King.

1 Pars. f. 11. c. 9.

It is most necessary both for common policy and duty of the Subject, to restrain all manner of shameful slanders against their King, which when they be heard, cannot but be odious to his true and loving Subjects, upon whom dependeth the whole unity and universal weal of the Realm. This condemns their continuing of the weekly Pamphlets which have been so foul mouthed against his Majesty.

Q. Mary.

1 Mar. Pl.

2. cap. 2.

4, 5 P. M.

3.

Q. Eliz.

10 Eliz. Pl.

315.

Plow. 234.

242. 213.

Calv. Case

7 pars. f. 12.

Plow. com.

213.

Plow. 934.

213. 213.

Calv. Case.

7 pars. f. 12.

The punishment of all Offenders against the Laws, belongs to the King: and all Jurisdiction do, and of right ought to belong to the King. This leaves all to his Majesty.

All Commissions to levy men for the War, are awarded by the King: The power of War only belongs to the King.

It belongs to the King to defend his people, and to provide Arms and Force. No speech of the two Houses.

Roy ad sole government de ses Subjects. Corps naturel le Roy & politique sont un corps. That is, The King hath the sole government of his Subjects. The Body Politick and the Natural Body of the King, make one Body, and not divers, and are inseparable and indivisible.

The Body Natural and Politick make one Body and are not to be severed: Ligeance is due to the Natural Body, and is due by nature, Gods Law and Mans Law, cannot be forfeited nor renounced by any means, it is inseparable from the person.

Every Member of the House of Commons,

every

every Parliament takes a corporal Oath: That the King is supream and only Governour in all causes in all his Dominions, otherwise he is no Member of that House; the words of the Law are, in all causes over all persons.

1 *Eliz. c. 1.*
Cawdries
Case, 5 pars
fol. 1.

The said Act of 1 *Eliz.* is but declarative of the ancient Law, *Cawdries Case, ibid.*

The Earl of *Essex*, and others, assembled multitudes of men to remove Counsellors, adjudged Treason by all the Judges of *England.*

43 *Eliz. 3.*
pars Instit.
fol. 6. 2.

To depose the King, or take him by force, to imprison him until he hath yielded to certain demands, adjudged Treason, and adjudged accordingly in the Lord *Cobhams Case:*

39 *El. Hill.*
1 *Jac. ibid.*

Arising to alter Religion established, or any Law is Treason; so for taking of the Kings Castles, Forts, Ports or Shipping, *Brook Treason 24. 3 & 4 Philip and Mary, Dist. Staffords Case concerning Scarborough.*

39 *Ed.*
Brad. Case
f. 9. & 16.
By all the
Judges of

The Law makes not the Servant greater then the Master, nor the Subject greater then the King, for that were to subvert order and measure.

Eng. ib. 10.
Eliz. Plow.
316.

The Law is not known but by Usage, and Usage proves the Law, and how Usage hath been is notoriously known.

10 *Eliz.*
Plow. 319.

The King is our only rightful and lawful Liege, Lord and Sovereign, we do upon the knees of our hearts agnize constant Faith, Loyalty and Obedience to the King and his Royal Progeny in this High Court of Parliament, where all the Body of the Realm is either in person, or by representation: we do acknowledge that the true and sincere Religion of the Church is continued and established by the King, And do recognize, as we are bound by the Law of God and Man, the Realm of *England* and the Imperial Crown thereof doth belong to him by inherent birth-right, and lawful and undoubted succession, and submit our selves and our Posterities for ever, until the last drop of our blood

K. James.
1 *Jac. c. 1.*
9 *Ed. 4. f. 1.*

be spent to his rule, and beseech the King to accept the same as the first fruits of our loyalty and faith to his Majesty and his Posterity for ever; and for that this Act is not compleat nor perfect without his Majesties assent, the same is humbly desired. This proves that the Houses are not above the King; that Kings have not their titles to the Crown by the two Houses, but by inherent birth-right; and that there can be no Statute without his express assent; and destroys the *Chimera* of the Kings virtual being in the Houses.

3 Jac. c. 4. To promise obedience to the Pope, or any other
23 El. c. 1. State, Prince or Potentate, other then the King,
his Heirs and Successors, is Treason; and therefore
those persons who call the Houses the Estates, offend this Law.

R. Charles
Collect. of Ordinances, f. 727. Such Bills as his Majesty is bound in conscience
and justice to pass, are no Law without his assent.

1 pars ib. To design the ruin of the Kings person, or of
the Monarchy, is a monstrous and injurious charge.

fo. 728. *ubi Lex non distinguit, non est distinguendum*: all
ibid. f. 855. the aforesaid Acts and Laws do evidently prove
the *Militia* to belong to the King: That the King
is not virtually in the two Houses: That the King
is not considerable separately in relation to his Politick
Capacity: That the King is not a person trusted
with a power, but that it is his inherent Birth-right
from God, Nature, and Law, and that he hath
not his power from the people: These Laws have
none of those distinctions of natural and politick
abstractum & concretum, power and person: in
Caesars time this Island had Kings, and ever since
which is almost 1700 years ago.

No King can be named, in any time made in the
Kingdom by the people; A Parliament never made
King, for they were Kings before: the Parliament
are summoned by the Kings Writs, which for
Knights, Citizens and Burgeses begin thus, viz.

Rex Vic. Wilts salutem. Quia Nos de avifamento

& offensa Consilij nostræ pro quibus. arduis & urgentibus negotiis Nos statum & defensionem Regni n'ri Ang. & Eccles. Anglic. concernentibus quoddam Parliamentum nostrum apud B. tenri ordinavimus, & ibid. cum Prelatis, Magnatib. & Proc.ribus dicti regni nostri Colloquium habere & tractatum, tibi precipimus firmiter injungenda quod facta Proclamatione in prox. Comitatu tuo post receptionem ejusd. Brevis, duas Milites gladiis cinctos, &c. eligi facias, ad faciendum & consentiendum hiis quæ tunc ibidem de Comuni Concilio n'ro Angl. favente Deo, contigerit ordinari super Negotiis antedictis, ita quod pro defectu potestatis hujusmodi, seu propter improvidam electionem Militum, Civium, & Burgensium præd. dicta negotio n'ra, infecta non remanerent.

The King is principium, caput, & finis Parliament. the body makes not the head, nor that which is posterior, that which is prior, consilium non est Præceptum, Consilij non sunt Præceptores, for Counsel to compel a consent hath not been heard of to this time in any age; & the H. of Commons, by the Writ, are not called ad consilium, the Writs to the twelve Judges, Kings Council, twelve Masters of the Chancery are consilium impensuræ, and so of the Peers. The Writs for the Comminalty, Ad faciendum & consentiendum: Which shews what power the representative Body hath; they have not power to give an Oath, neither do they claim it.

The King at all times when there is no Parliament, and in Parliament is assisted with the advice of the Judges of the Law, 12 in number, for England at least hath two Sergeants when fewest; an Attorney and Solicitor, twelve Masters of the Chancery, his Counsel of State consisting of some great Prelates, and other great Personages, versed in State affairs, when they are fewest to the number of twelve. All these persons are always of great substance, which is not preserved, but by the keeping of the Law; The Prelates versed in Di-

The Oath of Justices 18 of E. 2. among Statutes of that year.

vine Law, the other Grandees in affairs of State, and managery of Government; The Judges, Kings Sergeants, Attorney, Solicitor, and Masters of the Chancery versed in the Law and Customs of the Realm; All sworn to serve the King and his people justly and truly: The King is also sworn to observe the Laws, and the Judges have in their Oath a clause, that they shall do common right to the Kings people, according to the established Laws, notwithstanding any command of the King to the contrary, under the great Seal, or otherwise, the people are safe by the Laws in force, without any new: The Law finding the Kings of this Realm assisted with so many great men of Conscience, Honour, and skill in the rule of Common-wealth, knowledge of the Laws, and bound by the high and holy bond of an Oath upon the Evangelists, settles among other powers upon the King, a power to refuse any Bill agreed upon by both Houses, and power to pardon all offences, to pass any Grants in his Minority, (there are many great persons living hold many a thousand pound a year by Patents from *Edward* the sixth, passed when he was but ten years of age) not to be bound to any Law to his prejudice, whereby he doth not bind himself, power of War and Peace, coyning of Mony, making all Officers, &c. The Law, for the reasons aforesaid, hath approved these powers to be unquestionable in the King, and all Kings have enjoyed them till 3 Nov. 1640.

It will be said, notwithstanding all this fence about the Laws, the Laws have been violated, and therefore the said powers must not hold: the two Houses will remedy this.

The answer to this is evident: There is no time past, nor time present, nor will there be time to come, so long as men manage the Law, but the Laws will be broken more or less, as appears by the story of every age. All the pretended violations of this
time

time were remedied by Acts to which the King consented before his departure, 10 Jan. 1641. being then driven away by Tumults: And the Houses for a year and almost three months, from 3 Nov. 1640. to 10 Jan. 1641. as aforesaid, being a year and almost three months, had time and liberty to question all those persons who were either causes or instruments of the violation of any of the Laws.

Examine how both Houses remedied them in former times. First, touching Religion; What hath been done this way? Both Houses in *Henry* the Eighth time tendered to him a Bill to be passed, called commonly the Bill of the Six Articles: this was conceived by them to be a just and a necessary Bill: Had not *Henry* the Eighth done well to have refused the passing of this Bill? Both Houses tendered a Bill to him to take the reading of the Scriptures from most of the Laity. Had not King *Henry* the Eighth deserved much praise to reject this Bill? In Queen *Mary's* time both Houses exhibited a Bill to her to introduce the Popes power and the Roman Religion; had not Queen *Mary* done well to have refused this Bill? Many such Instances may be given. The two Houses now at *Westminster* I am sure will not deny but the refusal of such Bills had been just, the King being assisted as aforesaid: and why not so in these times?

For the Civil Government, what a Bill did both Houses present to *Richard* the third, to make good his Title to the Crown? had it not been great honour to him to have rejected it? What Bills were exhibited to *Henry* the Eighth by both Houses for bastardizing of his Daughter *Elizabeth*, a Queen of renowned memory, to settle the Crown of this Realm for default of Issue of his body, upon such persons as he should declare by his Letters Patents, or his last Will, and many more of the like? had not this refusal of passing such Bills magnified his virtue, and rendered him to posterity in a different

Character from what he now hath?

And by the experience of all times and the consideration of human frailty, this Conclusion is manifestly deduced, That it is not possible to keep men at all times (be they the Houses, or the King and his Council) but there will be sometimes some deviation from the Laws; and therefore the constant and certain powers fixed by the ancient Law must not be made void; and the Kings Ministers the Law do punish where the Law is transgressed, and they only ought to suffer for the same.

In this Parliament the Houses exhibited a Bill to take away the suffrages of Bishops in the upper House of Parliament, and have since agreed there shall be no more Bishops at all, might not the King if he had so pleased have answered this Bill with *Le Roy's avisera*, or *ne veult*? it was against *Magna Charta*, *Articuli Cleri*, and many other Acts of Parliament. And might have further given these reasons, if it had so pleased him for the same; First, that this Bill destroys the Writ whereby they are made two Houses of Parliament, 14. Hen. 7. fol. 22. *Evêsq; est signior de grand bonneur*, the King in the Writ being *cum Prælati colloquium habere*: Secondly, they have been in all Parliaments since we had any, and voted, but in such wherein they themselves were concerned: And there have been Bishops here since we were Christians, and the Fundamental Law of the Kingdom approves of them: if any of them were conceived offensive, they were left to Justice, and his Majesty would put in inoffensive men in their places; but since his Majesty hath passed the Bill for taking away their Votes in parliament, it is a Law that binds us so far.

Upon the whole matter the Law hath notably determined that Bills agreed by both Houses, pretended to be for the publick good, are to be judged by the King; for in all Kings reigns Bills have been

been preferred by both Houses, which always are pretended to be for the publick good, and many times are not, and were rejected with *Roy's aversera*, or *Roy ne vult*.

This Parliament began the 3 of *Novemb.* 1640. before that time in all the King's reign no armed dower did force any of the people to do any thing against the Law; what was done, was by his Judges, Officers, Referes and Ministers; from that time until the tenth of *Jan.* 1641, when the King went from *London* to avoid the danger of frequent tumults, being a year and three months, Privy Counsellors, and all his Justices and Ministers were left to the Justice of Law, there wanted not time to punish punishable men.

The Sphere of the House of Commons is to represent the grievances of the County to grant aids for the King upon all fit occasions extraordinary, to assent to the making or abrogating of Laws: The Orb of the House of Lords to reform erroneous judgments given in the Kings Bench, to redresse the delays of Courts of Justice, to receive all Petitions, to advise his Majesty with their counsel, to have their Votes in making or abrogating of Laws, and to propose for the common good, what they conceive meet.

Lex non cogit ad impossibilia, Subjects are not to expect from Kings impossible things; so many Judges, Councillors, Sheriffs, Justices of the Peace, Commissioners, Ministers of State, that the King should over-look them all, cannot be, it is impossible.

The King is virtually in his ordinary courts of Justice, so long as they continue his Courts: their charge is to administer the Laws in being, and not to delay, defer or sei justice for any Commandement of the King. We have Lawes enough; *Instrumenta boni seculi sunt boni viri*; good Ministers, Judges, and Officers, are many times wanting; the

the Houses propose new Laws, or abrogation of the old, both induce novelty; the Law for the reasons aforesaid, makes the King the only Judge, who is assisted therein by a great number of grave, learned and prudent men as aforesaid.

*Acts of
Grace.*

For the considerations aforesaid the Kings Party adhered to him, the Law of the Land is their Birth-right, their Guide; no offence is committed where that is not violated: they found the Commission of Array warranted by the Law; they found the King in this Parliament to have quitted the Ship-money, Knighthood-money, seven Courts of Justice, consented to a Triennial Parliament, settled the Forest bounds, took away the Clerk of the Market of the Household, trusted the House with the Navy, passed an Act not to dissolve this Parliament without the Houses assent; no people in the world so free, if they could have been content with Laws Oaths, and Reasons: and nothing more could or can be devised to secure us, neither hath been in any time.

Notwithstanding all this, we found the King driven from London by frequent tumults, that two thirds and more of the Lords had deserted that House for the same cause, and the greater part of the House of Commons left that House also for the same reason, new men chosen in their places against Law by the pretended Warrant of a counterfeited Seal, and in the Kings name against his consent, levying War against him, and seizing his Ports, Forts, Magazines and Revenue, and converting them to his destruction, and the subversion of the Law and Land, laying Taxes on the people, never heard of before in this Land, devised new Oaths to oppose Forces raised by the King, nor to adhere to him, but to them in this War; which they call the Negative Oath, and the Vow and Covenant.

By several wayes never used in this Kingdom they have raised monies to foment this War, and especially to enrich some among them: namely,

first,

first, *Excise*; secondly, *Contributions*, thirdly, *Sequestrations*; fourthly, *Fifth parts*; fifthly, *Twentieth parts*; sixthly, *Meal-money*; seventhly, *Sale of plundered goods*; eighthly, *Loanes*, ninthly, *Exercices*; tenthly, *Collections upon their Fast dayes*; eleventhly, *new Impositions upon Merchandizes*; twelfthly, *Guard, maintained upon the charge of private men*; thirteenthly, *Fifty Subsidies at one time*; fourteenthly, *Compositions with such as they call Delinquents*; fifteenthly, *Sale of Bishops Lands, &c.*

From the Kings party means of subsistence are taken; before any indictment, their lands seized, their goods taken: the Law allows a Traitor or Felon attainted *necessaria sibi & familiae suae in victu & vestitu*: where is the Covenant? where is the Petition of Right? Where is the Liberty of the Subject?

First we have aided the King in this War contrary to the Negative Oath, and other Votes: Our warrant is the twenty fifth of Edward the third, the second Chapter, and the said resolutions of all the Judges.

Secondly, we have maintained the Commission of Array by the Kings command, contrary to their Votes: We are warranted by the Statute of the fifth of Henry the fourth, and the judgment of Sir Edward Cook, the Oracle of the Law, as they call him.

Thirdly, we maintained Arch-Bishops and Bishops, whom they would suppress. Our warrant is *Magna Charta*, and many Statutes more.

Fourthly, We have maintained the Book of Common Prayer; they suppress it: Our warrant is five Acts of Parliament in Edward the sixth and Queen Elizabeths time, 5 Pasche 35. Elizabeth inter placita Coronae in Banco Regis, New Book of Entries, folio 252. Penry for publishing two scandalous Libels against the Church-Government, was indicted, arraigned, attainted, and executed at Tyburn.

Fifthly,

1 R. 3. c. 3.

Bract. l. 2.

c. 8. starf.

192. Sir G.

Fleete-

wood Ca's.

8 pars Cook

7 H. 4. last

leaf.

4 pars Inst.

125. 2 Inst.

696. The

Law so at

the Edition

of that

Book. Hut-

ton and

Crook.

Fifthly, We maintained the *Militia* of the Kingdom to belong to the King; they the contrary; Our warrant is the Statute of the seventh of *Edward* the first, and many Statutes since, the practice of all times, and the Custome of the Realm.

Sixthly, We maintained the counterfeiting of the great Seal to be high Treason, and so of the usurpation of the Kings Forts, Ports, Shipping, Castles, and his Revenut, and the Coyning of Money, against them: We have our warrant by the said Statute of the 25th of *Edw. 3. Chap. 2.* and divers others since, and the practice of all times.

Seventhly, We maintain, that the King is the only Supreme Governour in all causes: They, that his Majesty is to be governed by them: Our warrant is the Statutes of the first of Queen *Elizabeth*, Chapter the first, and the fifth of Queen *Elizabeth*, the first.

8thly, We maintain that the King is King
9 *Edw. 4.* by an inherent birth-right, by nature, by Gods Law,
f. 4. and by the Law of the Land. They say his Kingly right is an Office upon trust: Our warrant is the Statute of the first of King *James*, Chapter the first; and the resolution of all the Judges of *England* in *Calvin's Case*.

Ninthly, We maintain that the *politick capacity* is not to be severed from the natural. They hold the contrary: Our warrant is two Statutes (*viz.*) *exilium Hugonis* in *Edward* the seconds time, and the first of *Edward* the third, Chapter the second, and their Oracle, who hath published it to Posterity, that it is damnable, detestable, and execrable Treason; *Calvins Case*, pars 7. fol 11.

Tenthly, We maintain, that who aids the King at home or abroad, ought not to be molested questioned for the same. They hold and practise the contrary; Our warrant is the Statute of the eleventh of *Henry* the seventh, Chapter the first.

Eleventhly, We maintain, that the King hath power

power to disassent to any Bill agreed by the two Houses; which they deny: Our warrant is the Statute of the second of Henry the fifth and the practice of all times; the first of King Charles Chapter the seventh, the first of King James Chapter the first.

Twelfthly, We maintain, that Parliaments ought to be holden in a grave and peaceable manner, without tumults. They allowed multitudes of the meanest sort of the people to come to Westminster to cry for justice when they could not have their will, and keep guards of armed men to wait upon them: Our warrant is the Statute of the seventh of Edward the second, and their Oracle.

Collect. of
Ord. f. 31.

Thirteenthly, We maintain, that there is no State within this Kingdome but the Kings Majesty, and that to adhere to any other State within this Kingdom is high Treason: Our warrant is the Statute of the third of King James, Chapter the fourth, and the twenty third of Queen Elizabeth, Chapter the first.

Fourteenthly, We maintain, that to levie a War to remove Councillours, to alter Religion, or any Law established, is high Treason; They hold the contrary: Our warrant is the resolutions of all the Judges of England in Queen Elizabeths time, and their Oracle agrees with the same.

Fifteenthly, We maintain, that No man should be imprisoned, put out of his lands, but by due course of Law; and that no man ought to be adjudged to death, but by the Law established, the Customs of the Realme, or by Act of Parliament; They practise the contrary in London, Bristol, Kent, &c. Our warrant is Magna Charta, Chapter the twenty ninth, the Petition of Right, the third of King Charles, and divers Lawes there mentioned.

We of the Kings Party did and do detest Monopolies, and Ship-money, and all the grievances of the people as as much as any men living, we do well know, that our estates, lives and fortunes are preserved

served by the Laws, and that the King is bound by his Laws; we love Parliaments: if the Kings Judges, Councel, or Ministers have done amisse, they had from the third of November 1640, to the tenth of January 1641, time to punish them, being all left to justice, *Where is the Kings fault?*

11 pars
Cooks Rep.
Magdalen
College
Case.

The Law saith, *The King can do no wrong*, that he is *Medicus Regni, Pater Patriæ, Sponsus Regni, qui per annum* is espoused to his Realm at his Coronation; the King is Gods Lieutenant, and is not able to do an unjust thing: these are the words of the Law.

One great matter is pretended, that the People are not sure to enjoy the Acts passed this Parliament, a succeeding Parliament may repeal them: The Objection is very weak; a Parliament succeeding to that may repeal that repealing Parliament: That fear is endless and remediless; for it is the essence of Parliaments being compleat, and as they ought to be, of Head, and all the Members, to have power over Parliaments before: Parliaments are as the times are; If a turbulent faction prevails, the Parliaments are wicked, as appears by the examples recited before of extreme wicked Parliaments; if the times be sober and modest, prudent & not biassed, the Parliaments are right, good, and honourable, and they are good medicines and salves; but in this Parliament *excessit medicina modum*.

In this Cause and War between the Kings Majesty and the two Houses at Westminster, what guide had the Subjects of the Land to direct them but the Laws? What means could they use to discern what to follow, what to avoid, but the Laws? The King declares it *Treason* to adhere to the Houses in this War: the Houses declare it *Treason* to adhere to the King in this War: The Subjects for a great and considerable part of them (Treason being such a Crime as forfeits Life and Estate, also renders a mans Posterity base, beggarly, and infamous) look upon

upon the Laws, and find the letter of the Law requires them to assist the King, or before is manifested; was ever Subject criminally punished in any age or Nation for his pursuit of what the Letter of the Law commands?

The Subjects of the Kingdom find the distinction and interpretation now put upon the Laws of *Abstractum and Concretum*, Power and Person, body politic and natural; personal presence and virtual, to have been condemned by the Law; and so the Kings Party had both the Letter of the Law, and the Interpretation of the Letter cleared to their judgments, whereby they might evidently perceive what side to adhere to: what satisfaction could modest, peaceable, and loyal men more desire?

A verbo legis in criminibus & penis non est recedendum, hath been an approved maxime of Law in all Ages and times: If the King be King and remain in his Kingly Office (as they call it) then all the said Laws are against them without colour: they say the said Laws relate to him in his Office, they cannot say otherwise; they make Commissions and Pardons in the King's name, and the person of the King and his Body politic cannot, nor ought to be severed, as hath been before declared: And the Members of both Houses have sworn constantly in this Parliament that the King is the truly supreme Governor in all causes over all persons at this present day.

For what of verbal or personal commands of the King which is objected, we affirm few things to be subject thereto by the Law: but his Majesties Command under his great Seal, which in this War hath been used by the King; command for his Commission to levy and array men, that is no personal command (which the Law in some cases disallows) but that is such a command, so made, as all men hold their Lands by, who hold by Patents; all Corporations have their Charters which hold by Charters, and

Coll. of
Ord. 777.

5 El. cap. 1.
1 El. cap. 1.

and all Judges and Officers their places and calling.
Ob. It is Objected, The King cannot suppress his Courts of Justice, and that this War tended to their suppression.

Sol. The answer is, The King cannot nor ought to suppress Justice, or his Courts of Justice, nor ever did; but Courts of Justice by *abuser or non user* Westmore cease to be Courts of Justice; when Judges are made, and proceedings in those Courts holden by *1 Eliz. Ditr* other; then Judges made by the King, and against *165. 7 pars* his command under the great Seal, and his Majesty The Case is not obeyed, but the Votes of the Houses, and his of discon- Judges breaking that condition in Law, of trust and tinuance of loyalty, implied in their Patents, are no longer his process. Judges; they obey, and exercise their places by vertue of Writs and Processes under a counterfeit Seal: The King only can make Judges, the twenty seventh of Henry the eighth, Chapter the twenty fourth, *Justices of the Peace, &c.* The King's patent makes Judges: The chief Justice of the King's Bench is made by the King's Writ only of all the Judges.

*28. H. 8.
Ditr 11.*

*Articuli
super char-
tas cap. 5.
2 pars in-
stit. 552.
Britton.
fol. 23.*

The Great Seal is the Key of the Kingdom, and meet it is that the King should have the Key of his Kingdom about him: which confutes their saying, that the King got the Seal away surreptitiously.

The King, and he only may remove his Courts from *Westminster* into some other place: at *York* the Terms were kept for seven years in *Edward* the first's time; but for the Court of Common-Pleas, the place must be certain: for the King's Bench and Chancery, the King by the Law may command them to attend his Person always, if it seem so meet unto him; but the removing of the Common-Pleas must be to a place certain, and so notified to the people.

All the Books of Law in all times agree, that the King may grant consue of all Pleas at his pleasure within any County or Precinct to be holden

den there only, and remove the Courts from *Westminster* to some other place (for the Common-Pleas, 6.H.7.9. the place must be certain, and so notified to the 6.El.Dier. people,) and adjourn the Terms as he sees cause: 226. All which the two Houses have violated.

Some seeming Objections of Master Pryn's, scattered in divers Books answered, and the truth thereby more fully cleared.

THE first of *Henry* the fourth revived the Statute 1.Ob. of the eleventh of *Richard* the second, and repeals the one and twentieth of *Richard* the second, whereby certain persons were declared Traitors to the King and Kingdom, being of the King's Party, by 11 Ric.2.

True, but note, the eleventh of *Richard* the second, a Parliament beset with 40000. men, and the King assents to it, so an Act; and besides, the first of *Henry* the fourth declares, that the Treasons mentioned in the Act of the eleventh of *Richard* the second, being but against a few private men, shall not be drawn into example, and that no Treason should be, but such as the twenty fifth of *Edward* the third declares, All these are Acts passed by the King, & 9 Ed.4. the three Estates, nor to be drawn into example in Jul.30. a tumultuous time, by a besieged Parliament, with an Army; and *Henry* the fourth being an usurper, makes that Act of the first of *Henry* the fourth to secure himself: Also what is this to the Votes of the two Houses only at this time?

The Court of Parliament is above the King, for 2.Ob. it may avoid his Charters, Commissions, &c. granted against the Law.

And the Law is above the King.

By the same reason you may say that the Courts Sal. of Chancery, or any of the Courts of Law at *Westminster*

minster are above the King, for they make of no effect the King's Charters, which are passed against the Law; and the King is subject to Law, and sworn to maintain it. Again, it is no Parliament without the King, and the King is the head thereof; he is *principium, caput, & finis* of a Parliament, as *Modus tenendi Parliament.* hath it; and two Houses only, want *principium, caput & finis* of a Parliament; and it is a sorry Parliament that wants all these: And therefore to say that Parliaments are above the King, is to say the King is above himself.

3. Ob.

The Parliament can enlarge the King's Prerogative; therefore it is above him.

Sol.

If the King assent, otherwise not; and then it is an Act of Parliament, and otherwise no Act.

4. Ob.

Bracton saith, God, the Law, and the King's Court, (*viz.*) his Earls and Barons are above the King, *viz.* in Parliament as Mr. *Prinne* expounds it.

Sol.

Where is then the House of Commons? Indeed, take God, the Law, and Earls and Barons together, it is true; but to affirm that the Earls and Barons in Parliament are above the King (the King being the head of the Parliament, and they one of the Members) how an inferior member is above the head, is hard to conceive, besides that position destroys all Mr. *Prinne's* discourse, who attributes so much to the House of Commons.

5. Ob.

The King is but one of the three Estates of Parliament, and two are greater than one; therefore above.

Sol.

The Legs, Arms, and Trunk of the body are greater than the Head, and yet not above, nor with life without it; the argument holds for quantity, but not for quality, and in truth, the King is none of the three Estates but above them all; the three Estates are, the Lords Spiritual, the Lord's Temporal, and the Commons; Cook their Oracle, in his Chap. of Parl. f. 1.

6. Ob.

In Corporations, the greater number of voices make

make all the Acts of the Corporation valid; therefore so in Parliament.

By this reason the King's assent is needless, and Sol.
no end, and all the Acts of Parliament formerly mentioned, & Law-books have quite mistaken the matter, which with unanimous voice requires the King's assent as necessary: besides, the Corporations are so constituted by the King's Charters, & the greater number of Votes shall make their Acts valid.

The King, as King, is present in his Parliament as well as in all other his Courts of Justice, howbeit 7.Ob.
he is not there.

In his other Courts of Justice he hath no voice, he is none of the Judges, in the Parliament he hath; Sol.
his presence be not necessary, his voice is not, nor is assent.

The original prime legislative power of making laws, to bind the Subjects and their posterity, rests 8.Ob.
not in the King, but in the Kingdom and Parliament Sovereign
which represents it. power of

Master *Print* in the same lease affirms, and truly Parlia-
that the King's assent is generally requisite to pass ments, 49.
laws and ratify them; the King is the Head of the 74.
Kingdom and Parliament, how then can a Body act Sol.
without a Head.

A major part of a Corporation binds; therefore 9.Ob.
the major part in Parliament, and so of by-Laws.

The Corporation is so bound either by the Kings Sol.
Charter, or by prescription, which sometimes had the King's concession; but prescription, and Law,
and practice, always left the King a negative voice.

The King cannot alter the Bills presented to him 10.Ob.
by both Houses. go.

True, but the King may refuse them. Sol.

Acts of Parliament and Laws ministered in the 11.Ob.
reigns of Usurpers, bind rightful Kings. go.

What is this to prove the two houses power on- Sol.
ly, which is the question? A King *de facto* must be
obeyed by them who submitted to him, and they
are

9 E. 4. 12.

are his Subjects by their submission, and not Subjects *de facto* to the true King, and such being Traytors and Rebels to the Regent King (having renounced the true King) when the lawful King is restored, may be punished by him for their Treason against the Usurper: But here is a King still in both cases, & the proceedings at Law hold, the Judges having their Patents from the being Kings, In the Reigns of Kings *de facto* or *de jure*, so all Kings are bound, and sworn to observe the Law.

12. Ob.

A King dies without Heir, is an Infant, *non compos mentis*, &c. the two Houses may establish Laws, &c.

Sol.

There is no *Inter regnum* in England, as appears by all our Books of Law; and therefore the dying without Heir is a vain supposition, and by their principle he is considerable in his politick capacity, which cannot die at all. The Protector assisted by the Council of the King at Law, his twelve Judges, the Council of State, his Attorney, Solicitor, and two Serjeants at Law, his twelve Masters of the Chancery, hath in the Kings behalf, and ever had a Negative Voice; but what is this to the present question? We have a King of full age, of great Wisdom & Judgment; the power of the two Houses in such a case to be over the King, cannot be shown.

The King cannot dissent to publick and necessary Bills for the common good. go.

13. Ob.

Sol.

Nor ever did good King; but who shall be Judge, whether they be publick and necessary? The *Major* part in either of the Houses, for passing of Bills so pretended, may be but one or two Voices, or very few, and perhaps of no judicious men: Is it not then fitter or more agreeable to reason, that his Majesty and Council of State, his twelve Judges, his Serjeants, Attorney, and Solicitor, twelve Masters of the Chancery, should judge of the conveniency and benefit of such Bills for the publick good, rather than a *minor*, (of which sort there may be in the Houses) or a weak man, or a few, who often times carry

carry it by making the *major* part, which involves the consent of all? Let reason determine.

The Kings of *England*, have been elective; and the King by his Coronation Oath is bound to maintain *Justas legis & consuetudines quas Vulgas elegerit*, go.

Popery hath been in the Kingdom, and there- 14.Ob.

fore to continue it still, will not be taken for a good argument; when things are settled for many Ages, to look back to times of confusion is to destroy all repose: The Act of Parliament of the 1 of King *James*, Chapter the first, and all our extant Laws say, that the King's Office is an heritage inherent in the blood of our Kings, and their birth right. Sol.

And Usurpers that come in by the consent of the People, are Kings *de facto*, but not *de jure*, as appears by the Acts of Parliament declaring them so; and by all our Law-books and the fundamental constitution of the Land, Regal power is hereditary and not elective. 1 E. 4. c. 1.

For the words (*vulgas elegerit*) if *vulgas* be applied to the House of Common, they of themselves can make no Laws: The Peers were never yet termed *vulgas*; but allowing they be so called, the Laws to be made be just, and who is fit to judge thereof, is before made evident. 1 Hen. 7.

Customs cannot refer to future time, and both are coupled, Laws and Customs.

Princes have been deposed, and may be by the two Houses, go.

The Deposers were **T**raytors, as appears by the resolution of all the Judges of *England*; Cook, Chap. 15. Ob.
Treason, in the second part of the Institutes: And never was King deposed but in tumultuous and mad times, and by the power of Armies, and they who were to be the succeeding Kings in the head of them as *Edward* the third, and *Henry* the fourth. Sol.

The appeal to the Parliament for errors in judgments in all Courts is frequent, go.

This is only to the House of Lords, and that is not

16.Gb.

Sol.

not the parliament; the House of Commons has nothing to do therewith; and in the House of Peers, if a Writ of Error be brought to reverse a judgment, there is first a Petition to the King for the allowance thereof, and the reason of the Law in this case is, for that the Judges of the Land call them, the King's Council, and twelve Masters of Chancery assist there, by whose advice erroneous Judgments are redressed.

17.Ob.

The Parliaments have determined of the right of Kings, as in *Henry the Sixths* time, and others, as Parliaments have bound the succession of Kings, appears by the Statute of the thirteenth of *Queen Elizabeth*, Chapter the first: And the descent of the Crown is guided rather by a Parliamentary Title than by Common Law, go.

Sol.

If this objection be true, that the Title to the Crown is by Parliament, then we had no Usurper for they all had Parliaments to back them; yet *Richard the third*, that Monster. All our Books of Law say they have the Crown by descent, and the Statutes of the Land declare, that they have the same by inherent birth right. And the Statute of the thirteenth of *Elizabeth*, the first Chapter was made to secure *Queen Elizabeth* against the *Queen of Scots*, then in the Kingdom, claiming the Crown of *England*, and having many adherents: And that Statute to that end affirms a such power in the two Houses (which is the question) but in *Queen Elizabeth*, and the two Houses which makes against the pretence of this time.

Mr. Wynne, fol. 104. of his Book, intituled, *the Parliaments Supream power*, &c. Objecting the Statute of the first of *Queen Elizabeth*, and his own Oath, that the King is the only supreme Governor of this Realm; Answers, The Parliament is the supreme power, and the King supreme Governor. And yet there he allows him a Negative Voice and fol. 107. confesseth that Acts of Parliamen

translated the Crown from the right Heirs at Common-law, to others who had no good Title, then the Parliamentary Title makes not the King, so powerful is truth, that it escapes from a man unawares: To make a distinction between supreme Governor, and supreme Power, is very strange, for who can govern without power?

The King assembles the Parliament by his Writ, *Vide Spud* adjourns, prorogues, and dissolves the Parliament, by 645.4.pa. the Law at his pleasure, as is evident by constant Inst. 27. & practice, the House of Commons never sate after an adjournment of the Parliament by the Kings Command: Where is the supreme power?

The King by his Oath, is bound to deny no man 28. Ob. right, much less the Parliament, to agree to all just & necessary Laws proposed by them to the King. This is the substance of the discourse against the King's Negative Voice.

The King is so bound as is set down in the Ob. Sol. section; but who shall judge whether the bill proposed be just and necessary? For all that they do propose are so pretended and carried in either House, sometimes by one or two Voyces; or some few as aforesaid, and certainly as hath been shewn, the King, his Council of state, his Judges, Serjeants, Attorney, Solicitor, and twelve Masters of the Chancery can better judge of them, then two or three, or few more.

Mr. Wynne fol. 45. In his Book of the Parliaments interest to nominate Privy Counsellors, calleth the opinion of the *Spencers* to divide the person of the King from his Crown, a strange opinion, and cites Calvin's Case, but leaves out the conclusions therein mentioned, fol. 11. Master Wynne saith there, but let this opinion be what it will; without the King's Grace and Pardon it will go very far, and two Acts of Parliament there mentioned are beyond an opinion: And in his Book of the opening of the Great Seal, fol. 17. The Parliament

Calvins
case 7. pa.
fol.

ment hath no jurisdiction to use the Great Seal for Pardons General or Particular. Where is the Supreme power then?

19. Ob.

Mr. Wynne's (opening of the Seal) pag. 19. saith the Noblemen and State, the day after the Funeral of King Henry the third (King Edward the first his Son being in the Holy Land) made a new great Seal, and keepers of the same; And in Henry the sixths time, in the first year of his Reign, the like was done in Parliament.

Sol.

A facto ad jus, it is no good Argument, for that in Edward the firsts time, it was no Parliament, for King Henry the third was dead, which dissolved the Parliament if called in his time, and it could be no Parliament of Edward the firsts time, for no Writ issued to summon a Parliament in his Name nor could issue but under the New Seal, it was suddenly done after Henry the thirds death, King Edward the first being then in the Holy Land, it was the first year of his Reign: and no Parliament was held that year, nor the second year of his Reign: The first Parliament that was in his Reign was in the third year of his Reign, as appears by the printed Acts: Also the making of that Seal was by some Lords then present; What hand had the Commons in it? Concerning the Seal made by Henry the sixths time, the Protector was Vice-Roy according to the course of Law, and so the making of that Seal was by the Protector in the Kings name, & that Protector, Humphrey Duke of Gloucester, as Protectors, in the Kings Name summoned that Parliament, and was Protector made by the Lords, and not in Parliament, as appeareth plainly for that Parliament was in the first of Henry the sixth, and the first holden in his time, and power given by Commission to the said Duke, then Protector, to summon that Parliament, Wynne *ibid* fol. 19. But the New Counterfeit Seal was made when the King was at Oxford, in his own Kingdom, and not in the Holy Land.

Maste

Master Wynne in his Book of the two Houses 20. Ob.
power to impole Taxes, restrains Malignants a-
gainst any *Habeas Corpus*, &c. saith, that the Parlia-
ment is above *Magna Charta*, and fol. 13. *ibid.* The
Parliament hath power over *Magna Charta* to re-
peal the same when there is Cause.

This Argument supposeth that they have the
King's power, which hath appeared formerly they *Sol.*
have not: But suppose they had, *Magna Charta*
contains many Moral Laws, which by the Law of
the Land a Parliament cannot alter, 21 H. 7. 2 D.
and Student, 2. Dialogue. For example, it saith
Chap. 18. Justice shall not be sold, delayed, nor
denied to any man; but by this Argument the Par-
liament may make Law to delay, deny, and to sell
Justice, which surely is a very ill position to maintain.

What they would have, doth now by the Propo-
sitions sent to Newcastle to his Majesty appear,
whereby they would have him divest himself, and
settle in them all his Kingly power by Sea and
Land, and of themselves to have power, without
him, to lay upon the People of this Land what Tax-
es they think meet, to abolish the Common-Prayer-
Book, to abolish Episcopacy, and to introduce a
Church Government not yet agreed, but such as
they shall agree on.

His Majesty finding a prevailing party in both
Houses to steer this course, and being chased away
with Tumults from London, leaves the Houses for
these Reasons, (*viz.*)

First because to alter the Government, or Re-
ligion, is against the Kings Oath.

Secondly, against their Oaths: For every of
them hath sworn in this Parliament; That his Ma-
jesty is the only supreme Governor in all Causes
Ecclesiastical and over all persons.

Thirdly, this course is against *Magna Charta*, the
1 Chap. and the last *Salve sint Episcopi omnes liber-
tates sue*, Confirmed by thirty two Acts of Parlia-
ment

ment: and in the two and fortieth of **Edward** the third, the first Chapter enacts, if any Statute be made to the contrary, it shall be holden for none: and so it is for judgments at Law, in the 25. of **Edward** the 1 Chap. 1, 2. The Great Charter is declared to be the Common Law of the Land.

Fourthly, They endeavour to take away by their Propositions, the Government of **Bishops**, which is as ancient as Christianity in this Land, and the **Book of Common-Prayer** settled by five Acts of Parliament, and compiled by the Reformers and **Doctors**, and practised in the time of 4. **Princes**.

Fifthly, these propositions taking away from his Majesty all his power by Land and Sea, rob him of that which all his Ancestors, Kings of this Realm, have enjoyed: That enjoyment and usage makes the Law, and a Right by the same to his Majesty. They are against their own Protestations made this Parliament, (*viz.*) to maintain his Royal Person, Honour, and Estate; They are against their Covenant, which doth say, that they will not diminish his just power and Greatness.

For these Reasons his Majesty hath left them, and as is believed will refuse to agree to the said Propositions, as by the fundamental Law of the Land he may, (having a Negative Voice) to any Bills proposed.

The result of all is upon the whole matter: That the King thus leaving of the Houses, and his denial to pass the said propositions, are so far from making him a Tyrant, or not in a condition to govern, at the present; that thereby he is rendred a Just, Magnanimous, and Pious Prince: so that by this it appears clearly to whom the Miseries of these times are to be imputed. The remedy for all, is, an Act of Oblivion, and a General Pardon.

God save the King.

28. Aprilis, 1647.

David Jenkins, now

Prisoner in the Tower.

*The Vindication of Judge Jenkins Prisoner
in the Tower, the 29th. of April 1647.*

I Was convened upon Saturday the 10th. of this month of April before a Committee of the House of Commons, wherein Mr. Corbet had the Chair; and I was there to be examined upon some Questions then to be propounded to me; to which Questions I refused to give any other Answer than that which was set down in a paper then delivered to the said Mr. Corbet, which followeth in these words.

Gentlemen, I stand committed by the House of Commons for High Treason, for not acknowledging nor obeying the power of the two Houses by adhering to the King in this war, I deny this to be treason, for the supreme & only power by the laws of this land is in the K. If I should submit to any examination derived from your power, which by the Negative Oath stands in opposition to the K. power, I should confess the power to be in you and so condemn my self, for a Traytor; which I neither ought nor will do.

I am sworn to obey the King, and the Laws of the Land; you have not power to examine me by those Laws but by the Kings writ, Patent or Commission: if you can produce either thereof, I will answer the questions you shall propound; otherwise I cannot answer thereof without the breach of my Oath, and the violation of the Laws, which I will not do to save my life,

You your selves, all of you this Parliament, have sworn that the King is our only and supreme Governour; your protestation, your Vow and Covenant, your solemn League and Covenant, your Declarations, all of them published to the Kingdom, that your scope is the maintenance of the Laws; those Laws are and

must

must be derived to us, and enlivened by the only
 supreme Governour, the Fountain of Justice,
 and the life of the Law, the King. The Parlia-
 ment is called by his Writs, the Judges sit
 by his Patents, so of all other Officers, the Ci-
 tizens and Towns Corporate, govern by the Kings
 Charters; and therefore since by the Law I
 cannot be examined by you, without a power
 derived by his Majesty, I neither can, nor will,
 nor ought you to examine me upon any ques-
 tions. But if as private Gentlemen, you shall be
 pleased to ask me any questions, I shall really
 and truly answer every such question, as you
 shall demand. *April 10. 1647. David Jenkins.*

This Paper hath been mis-represented to the
 good People of this City by a printed one, styling it
 my Recantation, which I own not: and besides is
 in it self repugnant (just like these times) the Body
 falls out with the Head. To vindicate my self from
 that Recantation, and to publish to the World the
 reality of the Paper then delivered to Mr. Corbet,
 and the matter therein contained, I have published
 this ensuing discourse.

No person who hath committed Treason, Mur-
 der or Felony, hath any assurance at all for so much
 as an hour of life, Lands or Goods, without the
 Kings gracious pardon, 27 H. 8. c. 24.

The King is not virtually in the two Houses at
 West. whereby they may give any assurance at all to
 any person, in any thing, for any such offence.

1. The House of Commons have declared to
 the Kingdom in their Declaration of the 28. of
 November last, to the Scots Papers, p. 8. That
 the King at this time is not in a condition to
 govern. No person or thing can derive a vertue to
 other men, or things, which it self hath not; and
 therefore it is impossible that they should have a
 vertue from the King to govern, which they declare
 he hath not himself to give.

2. The

2. The Law of the Land is, *That* no person in any Parliament hath a voice in the House of Commons, but that he stands a person to all intents and purposes as if he had never been elected or returned, if before he sit in the House, he take not his Oath upon the Holy Evangelists, that the Kings Majesty is the only and supreme Governour over all persons and in all Causes. All the Members of the said House have taken it, and at all times as they are returned do take it; otherwise they have no colour to intermeddle with the publick Affairs. Now doth this Solemn and Legal Oath agree with their said Declaration, *That the King is in no condition to govern?* By the one it is sworn he is the only supreme Governor; by the other that he is not in a condition to govern.

3. The Oath is not, that the King was, or ought to be, or had been, before he was seduced by ill Council, or only supreme Governor in all Causes, over all Persons; but in the present tence, that he is our only supreme Governour, at this present in all Causes and over all Persons. So they the same persons swear one thing, and declare to the Kingdom the contrary of the same thing, at the same time, in that which concerneth the weal of all this Nation.

4. The Ministers in the Pulpits do not say, what they swear in the House of Commons. Who ever heard since this unnatural War, any of their Presbyters attribute that to his Majesty which they swear? The reason is this, their Oath is taken at Westminster among themselves that which their Ministers pray and preach, goes amongst the people. To tell the people that the King is now their only and supreme Governor in all Causes, is contrary to that the Houses do now practice, and to all they act and maintain. The two Houses forsooth, are the only and supreme Governors in default of the King, for that he hath left his great

Council, and will not come to them, and yet the King desires to come, but they will not suffer him, but keep him prisoner at *Holmbury*: so well do their Actions and Oaths agree.

5. They swear now, King *Charles* is their only and supreme Governor; but with a resolution at the time of the Oath taking, and before and after, that he shall not be only or supreme Governor, or only and supreme, but not any Governor at all: For there is no point of Government, but for some years past they have taken to themselves, and used his name only, to abuse and deceive the People.

6. That this virtual power is a meer fiction, their Propositions sent to *Oxford*, to *Newcastle*, to be signed by the King, do prove it so. What needs this ado, if they have the virtual power with them at *Westminster*?

7. To affirm that the King's power (which is the vertue they talk of) is seperable from his person, is High Treason by the Law of the Land; which is so declared by that learned man of this Law, Sir *Edward Cook*; so much magnified by this Present Parliament, who in the 7. part of his Reports in *Calving* case, fol. 11. saith thus. In the Reign of *Edward the second*. The *Spencers* the Father and Son, to cover the Treason hatched in their hearts, invented this damnable and damned opinion, that homage & Oath of Legeance was more by reason of the Kings Crown, (that is of his politick capacity) then by reason of the person of the King, upon which opinion they inferred three execrable and detestable consequences.

1. If the King do not demean himself by reason in the right of his Crown, his Lieges are bound by Oath to remove the King. 2. Seeing that the King could not be reformed by surety of Law, that ought to be done per asperum, that is by force. 3. That his Lieges be bound to govern in aid of him, and in default of him; all which

which were condemned by the two Parliaments one in the reign of **Edw. 2.** *exilium Hugonis le Spencer*; and the other in Anno, 1 **Ed. 3** c. 2.

And that the natural body and politic makes one indivisible body, and that these two bodies incorporate in one person make one body and not divers, is resolved as the Law of **Eng. 1 Eliz. Plowden** Cō fol. 113. by Sir **Corbet Catlin**, L. Chief Justice of **Eng.** Sir **James Dier**, L. Chief Justice of the Common pleas, the **L. Sanders**, L. Chief Baron of the Ex. chequer, and by the rest of the Judges; viz. Justice **Rastall**, Justice **Brown**, Justice **Corbet**, Justice **Weston**, Baron **Frevel**, **Carus** and **Powtrel**, Serjeant to the Queen, **Garrard** Attorney General; **Carell** Attorney of the Dutchy, **Blowden** the learnedst man of that age, in the knowledge of the Law, and Customs of the Realms.

8. The Law in all ages without any controversy is and hath been: that no Act of Parliament binds the Subjects of this Land without the assent of the King, either for person, Lands, Goods, or fame. No man can shew any syllable, letter, or line to the contrary in the Books of the Law, or printed Acts of Parliament, in any age in this Land: if the virtual power be in the Houses, there needs no assent of the Kings. The stiles of the Acts printed from 9 H. 3. to 1. H. 7. were either **The K. ordains at his Parliament. &c. or the King ordaineth by the advise of his Prelates and Barons**, and at the humble Petition of the Commons, &c. In H. 7. his time the stile altered, and hath since continued thus; **It is ordained by the Kings Majesty, and the Lords Spiritual and Temporal, and Commons in this present Parliament assembled**: So that always the Assent of the King giveth the life to all, as the soul to the body; and therefore our Law books call the King the Fountain of Justice, & the life of the Law.

9. Mercy as well as Justice belongs by the Law

9H. 3, M.C.
So in every age till this day, and in every Kings time as appears in the acts in Print.

1. Part of the Inlit. § 234. in fine where many of the Law books are cited 7H. 7. 14. 12. of H. 7. 20.

2 H. 4 c. 22 of the Land only to the King. This is confessed by
 4 part inst. Mr. Pryn, and it is so without any question: The
 42. Mr. King can only pardon, & never more cause to have
 Trin in his sufficient Pardons: then in such troublesome times as
 treatise of these, and God send us Pardons and Peace: None
 the great can give any Pardon, but the King by the Law of
 Seal fol. 17 the Land: **The whole and sole power of pardon-**
 27. H. 8 c. **ning Treasons and felonies belonging to the**
 24. **It** are the words of the Law, & it is a delusion to
 take it from any other, & utterly invalid 27 H. 8. c. 24

10. Q. E. summoned her first Parl. to be held the
 23 of Jan. in the first year of her Majesties Reigne;
 The Lords & Commons assembled by force of the
 same Writ, the 21. day the Q. fell sick, and could not
 appear in her Person in Parl. that day, and therefore
 prorogued it untill the 25. of the same month of
 3. of Eliz. Jan. Resolved by all the Judges of Eng. that the Parl.
 Di. 293. began not the day of the return of the writ, viz. the 23.
 of Jan. when the Lords and Commons appeared, but the
 25. of the said month when the Q. came in person; which
 sheweth evidently that this virtual presence is a
 meer deluding fiction that hath no ground in Law,
 Reason, or Sense. They have the King now a priso-
 ner at Holmby, with guards upon him, and yet they
 govern by the virtual power of their Prisoner.
 These are some few of the causes & reasons which
 moved me to deliver that Paper to Mr. Corbet,
 which I am ready to justify with my life, and should
 hold it a great honour to die for the honourable, and
 holy Laws of the Land: that which will save this
 Land from destruction, is, an Act of oblivion and
 his Majesties gracious general pardon, the soul-
 diers their arrears, and Truth and Peace e-
 stablished in the Land, and a favourable regard
 had to the satisfaction of tender Consciences.

*Virtual
 presence of
 the King
 a meer de-
 lusion.*

April 29 1647.

David Jenkins.

THE
ARMIES
INDEMPNITY,

With Addition.

Together,

With a Declaration shewing how every Subject of *England* ought to be tried for Treasons, Felonies, and all other Capital Crimes, as it is set down in the Laws of the Land.

By *DAVID JENKINS*,

Now Prisoner in the

Tower of L O N D O N.

L O N D O N,

Printed in the Year, 1681.

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The Armies Indemnity, &c.

UPon the publishing of the Ordinance of the 22 of May last, for the Indemnity of the Army, certain Gentlemen well affected to the Peace of the Kingdom, and safety of the Army, desired me to set down in writing, whether by the Law of the Land, the said Ordinance did secure them from danger as to the matters therein mentioned: For whose satisfaction in a business wherein the lives and fortunes of so many men were concerned, and the peace of the Kingdom involved, I conceived I was bound in duty and conscience faithfully and truly to set down what the Law of the Land therein is, which accordingly I have with all sincerity expressed in this following Discourse.

The danger of the Army by the Law of the Land is apparent to all men: It is high Treason by the Law of the Land to levy War against the King, to compass or imagin his death, or the death of his Queen, or of his eldest Son, to counterfeit his Money or his great Seal; They are the very words of the Law: Other Treasons then are specified in that Act are declared to be no Treasons until the King and his Parliament shall declare otherwise; they are the very words of the Law; King and Commons, King and Lords, Commons and Lords cannot declare any other thing to be Treason then there is declared; as appears by the Lord Cook, in the places cited in the Margin; A Law-book published by order of the House of Commons this Parliament, as appears in the last leaf of the second Part of the Institutes published likewise by their Order.

25 Ed. 4. c.
21. 2 R. 2.
c. 3. 2 H.
4. c. 10.
1 & 2 E. 6.
& M. 10.
3 pars Inst.
p. 22 & 2
pars Inst. p.
47, 48. &
4 pars Inst.
p. 23. 48.
49. 3 pars
Inst. cap.
Treason,
p. 9, 10, 12.

The Resolutions of all the Judges of England,
upon

Mr. S. John upon the said Statute of 25 Ed. 3. (as appears in the the Sollici- said third part of the Institutes, Chap. High-Treason) tor in his have been, that to imprison the King until he a- Speechap- gree to certain demands is High Treason; to seize on the Ar- his Forts, Port, Magazine for War, are High Tre- raignment son; to alter the Laws is High Treason.

of the E. of The word King in the Statute of 25 Ed. 3. cap. 2. Strafford. must be understood of the Kings natural person; Printed by for that person can only dye, have a Wife, have order of Son, or be imprisoned.

the House The Priviledge of Parliament protects no man of Com. from Treason or Felony, howbeit he be a Member; pag. 7. 13. much less can they protect other: those who can- 4 pars Inst. not protect themselves, have no colour to make 6. Parl. p. Ordinances to protect others who are no Members, 25.

The Statute of 11 H. 7. c. 1. doth by exprets words 11 H. 7. c. 1. free all persons who adhere to the King.

Stamf. l. 2. The Army by an Act of Indempnity free them- j. c. 9. selves from all those dangers, which an Ordinance

18 E. 3. can no more do then repeal all the Laws of the Statutes at Land, the whole and sole power by Law to pardon large 144. all Treasons, Felonies, &c. being solely and whol- 20 E. 3. c. 1. ly in the King, as is cleared by the Statute of 27 H. 11 R. 2. c. 10. 8. c. 24. and the Law of the Land in all times.

4 pars Inst. Having shewed the danger of the Army by the p. 23. 48. 29 Law of the Land, next consider the Ordinance of the Lords and Common; published the 22 of May last for their Indempnity; by the ensuing discourse it doth appear they have no Indempnity at all there- by.

The Indempnity proposed by the Ordinance is for any Act done by the authority of the Parl. or for the service or benefit thereof; and that the Judges, and all other Ministers of Justice shall al- low thereof.

This Ordinance cannot secure the Army for these reasons.

3 pars Inst. 1. Their Judges are sworn to do Justice ac- p. 22. cording to the Law of the Land, and therefore the Judges

Judges must be forsworn men if they obey it; because an Ordinance of both Houses is no Law of the Land, and no man can believe they will perjure themselves so palpably and visibly in the eye of the world.

2 All trialls for treasons, felonies, robberies, and such like capital offences, are by the Law of the Land to be by indictment of a Jury appointed out of the Neighbourhood where the offence was done. There is no common Jury man but understands what the Law is in these cases as well as the best Lawyers, and the Law makes the Jury Judges of the fact, whereby the Souldier is left to their mercy whom he hath offended (as som of them have lately had woful experience and thereupon do rightly apprehend their danger) Now no man can think that the Jurors wil perjure themselves to acquit the souldiers for robbing and plundring of the Counties and thereby utterly destroy their owne Rights and Properties.

3 If the Judges conceive (as they may) that the taking of other mens horses or goods is not by the authority of Parliament, or for the service and benefit thereof, the Souldier dyes for it; they may say to steale or rob any man of his goods is not for the Parliaments service but against it, which was alwayes the sense of the people, and doubtless the Jurors will not think otherwise.

4. This Ordinance is restrained to the authority service or benefit of the Parl. The Lords and Commons make no more a Parliament by the Law of the Land, then a body without a head makes a man; for a Parliament is a body composed of a King their head; The Lords and Commons the Members. All three together make one body, and that is the Parl. and no other; and the Judges may, ought, and I believe, will according to their oaths proceed, as not bound at all by this Ordinance. For it is restrained to the authority of Parl. service or bene-

2 pars Inst. 47, 48.

1 pars Inst. 193.

Princes C. 8. Reports.

Mag. Char. c. 29. 37 E.

3. c. 4. 28 E. 3. c. 3.

27 E. 3. c. 8. 42 E. 3. c. 3.

Declar. of the Army

presented at Walden,

and printed by the ap-

pointment of the Offi.

subscribed.

4 pars Inst. p. 1. 3 pars

Inst. p. 22. 1 pars Inst.

p. 1. 28 H. 8. f. 11.

Dier 38 H. f. 60. 12 H.

7. 20. 1 pars Inst. 159.

Princes C. 8. Reports.

fit

fit thereof, whereas the two Houses are not the Parl. but only parts thereof, and by the abuse and misunderstanding of this word *Parliament* they have miserably deceived the People.

28 August,
1642.

Coll. of Ord.

first part,

565. 592.

605. *(ever-*

ral Ord.

1 *pars Instl.*

109, 110.

4 *pars p. 49.*

5 This Ordinance is against their Ordinance which expressly prohibits plundering, and so there is one Ordinance against another, whereby their Judges have an out-let to proceed on the one or the other, and thereby the Army hath no manner of security.

6 The word *Parliament* is a French word (howbeit, such Assemblies were before the Norman Conquest here,) and signifies in that language to consult and treat; that is the sense of the word *Parler* in the French Tongue. The Writ whereby the two houses are assembled, which is called the writ of Summons of Parliament, at all times, and at this Parliament used and which is the warrant, ground, and foundation of their meeting, is for the Lords of the House of Peers, the Judges and Kings Council to consult and treat with the King (that is the *Parler*) of great concernments, touching, *first* the King, *secondly* the defence of his kingdom, *thirdly* the defence of the Church of *England*. It cannot be a Parliament that will not parle with their King, but keep him in prison, and not suffer him to come to them & parle, & therefore the law, and sense, and reason informing every man, that is no manner of Parliament (the King with whom they should parle, being so restrained, that they will not parle with him); the army hath no manner of security by this Ordinance; for their indemnification refers to that which is not in being until the King be at liberty.

*The common
Soldiers*

2d Apol.

6 Grievan-

ces of the

Army, pub-

lished 15

May last.

7 It is more then probable that their Judges before the last Circuit had Instructions to the effect of this Ordinance, but they the Judges making conscience of their Oath, laid aside the said instructions, and ought, and may, and it is believed will

will no more regard this Ordinance, then the said 3 *Grievances of Col. Rich's Regiment.*
 Instructions: What was done in the last Circuit the Army well knows, touching many of their fellow-souldiers.

8 The Houses in their first Proposition to his Majesty for a safe and well grounded Peace, sent to Newcastle to desire a pardon from his Majesty for themselves: they who desire a pardon, cannot grant a pardon (common reason dictates this to every man) and therefore that the Army should accept an Indemnity from them who seek it for themselves, or should conceive it of any manner of force, is a fancy: so that no man in the whole Army but may apprehend, that it is vain, and a meer delusion.

9 His Majesty by his gracious Message of the 12 of May last, hath offered an Act of Oblivion, and a general pardon to all his people; this done, the Law doth indemnifie the Army (without all manner of scruple) for any thing that hath been done; for it is an Act of Parliament, when the King and two Houses concur, and binds all men. There is no safety by the Ordinance; there is safety by an Act of Parliament: And will not reasonable men prefer that which is safe before that which is unsafe?

10 His Majesty by his said Letter agrees to pay the Arrears of the Army; I am sure that it is a Publick Debt, and the chiefest and the first that by the two Houses should be paid, and before any dividend or gratuities bestowed among themselves; for their blood, limbs and lives have put and kept both the Houses at rest in the power they have: So by this concurrence of his Majesty for your indemnity, and for your arrears the Army have not an Ordinance, or the Publick Faith, but the Law of the Land to make sure unto them their Indemnity for all Acts, and for their Arrears, and therewith also bring peace to the Land.

Mr. Pym's
Speech a-
gainst the
E. of Straf-
ford, p. 16.
Six Consi-
derations
printed by
the com-
mand of the
House of
Commons.

11 The Kingdom and people generally desire these things. To such an Army just and reasonable things must not be denied; the things formerly proposed are most just and reasonable, you may have them if you will; if you will not, you render this Kingdom miserable, wherein you will have your shares of miseries: The head and the body are such an incorporation as cannot be dissolved without the destruction of both:

The Additional Ordinance of both Houses passed the fifth of June instant for the fuller indemnity of the Army, makes nothing at all to the matter: For that extends not to Felony, Homicide, Burglary, Robbery, or any other capital crime, which is the main business insisted upon, and most concerneth the Souldiers security.

12 That both Houses in the said additional Ordinance say, that it is expedient that all offences be pardoned & put in oblivion: pardon & oblivion cannot be understood to be for a time, but for ever, and they themselves confess, that an Ordinance is not binding but *pro tempore*, which with the most advantagious Interpretation can be but a reprieve or delay of the execution of the Law; and therefore that cannot pardon or put in oblivion by their own shewing.

27 H. 8. c. 24. But the Law of the Land is, (and so it hath constantly been practised in all times) that no person, of what estate so ever, have any power to pardon Treason, Felony, or any other offences, but the King only, who hath the sole and whole power to pardon all such crimes whatsoever. And in the same manner an Ordinance is of no Authority at all to take away the right of privates mens actions, by any evidence it can give. In truth all the evidence that this Ordinance will give, is, that it records to posterity nothing but a lawlesse and distempered time.

For remedy thereof I say again; It is a certain truth, this

this Kingdom without an Act of Oblivion, and a general Pardon, and the payment of Souldiers Arrears, and a meet regard had to tender Consciences will unavoidably be ruined.

June 10. 1647.

David Jenkins, Prisoner
in the Tower of London.

Sundry Acts of Parliament mentioned and cited in the Armies Indemnities: set forth in words at large, for the better satisfaction of such as desire to be rightly informed.

23 Ed. Chap. 2.

Declaration what offences shall be adjudged Treason.

Whereas divers opinions have been before this time in what case Treason shall be held, and in what not: The King at the request of the Lords and of the Commons, hath made a Declaration in the manner as hereafter followeth: That is to say, when a man doth compass or imagine the death of our Lord the King, or of our Lady the Queen, or of the eldest Son and Heir: or do violate the Kings companion, or the Kings eldest Daughter unmarried, or the Wife of the Kings eldest Son and Heir; or if a man do levy war against the Lord our King in his Realm, or be adherent to the Kings Enemies in his Realm, giving to them aid & comfort in the Realm, or else where, and thereof be probably intainted of opendeed by people of their condition: And if a man counterfeit the Kings great or privy Seal or his Mony: and if any man bring false Mony into this Realm, counterfeit to the mony of England, & the mony called Lusburgh, or other like to the said mony of England, &c.

11 Hen.

II. H. 7. Chap. 1.

None that shall attend upon the King, and do him true service shall be attainted, or forfeit any thing.

The King our Sovereign Lord calling to remembrance the Duty of Allegiance of his Subjects of this his Realm, and that they by reason of the same are bound to serve their prince and Sovereign Lord for the time being in his Wars, for the defence of him and the Land against every Rebellion, power, and might raised and reared against him, and with him to enter and abide in service in battel, if case do require, and that for the same service what fortune ebe fall by chance in the same battel against the mind and will of the Prince (as in this Land sometimes passed hath been seen) that is not reasonable, but against all laws reason and good conscience, that the said Subjects going with their Sovereign Lord in Wars attending upon him in his person, or bring in other places by his commandment within this Land or without anything should lose or forfeit for doing their Duty or service of Allegiance. It be therefore ordained enacted and established by the King our Sovereign, by the advise & assent of his Lords Spiritual and Temporal, and the Commons in the present Parliament assembled and by authority of the same, that from henceforth no manner of person or persons whatsoever he or they be, that attend upon the King and Sovereign Lord in this Land for the time being, in his person, and do him true and faithful service of Allegiance to the same, or be in other places by his commandment in his Wars within this Land, or without that for the said deed and true duty of Allegiance, he or they be in no wise convict or attainted of high Treason, nor of other offences for the

cause, by Act of Parliament, or otherwise by any
 Process of law whereby he or any of them shall
 lose or forfeit life, lands, tenements, rents posses-
 sions, hereditaments, goods chattels, or any o-
 ther things; but to be for that dread & service ut-
 terly discharged of any vexation, trouble or loss.
 And if any Act or Acts, or other Process of the
 Law hereafter thereupon for the same happen
 be made contrary to this Ordinance, that
 whosoever that Act or Acts, or other Process of Law
 whatsoever they shall be, stand and be utterly
 void. Prohibited always, that no person or per-
 sons shall take any benefit or advantage by this
 Act, which shall hereafter decline from his or
 their said Allegiance.

Cap. 22. in the Statute of 27. H. 8. It is enacted
 that no person or persons, of what estate or de-
 gree soever they be of, shall have any power or
 authority to pardon or remit any Treason, mur-
 ders, manslughters, or any kind of felonies, &c.
 but that the King shall have the sole and whole
 power and authority thereof united and knit to
 the Imperial Crown, as of right it appertain-
 eth, &c. And in the same Statute it is enacted fur-
 ther, That none shall have power of what estate,
 degree, or condition soever they be, to make Ju-
 stices of Peace, Justices of Peace, &c. but all
 such Officers and Ministers shall be made by
 Letters Patents under the Kings great Seal,
 in the name, & by the authority of the King and
 his heirs and Successors, Kings of this Realm.
 In the first year of Q. Mary, and the first Chap.
 it is enacted by the Queen, with the consent of
 the Lords and Commons, That no deed or of-
 fence by Act of Parliament made Treason,
 shall be taken, deemed, or adjudged to be high
 Treason, but only such as be declared and ex-
 pressed to be Treason by the Act of Parliament,
 made 25 Ed. c. before mentioned.

A Declaration of M. David Jenkins, now Prisoner in the Tower of London, one of His Majesties Judges in Wales for tryals of Treasons Murthers, Felonies, and all other capital crimes that they ought only to be by Juries, and not otherwise, unless it be by act of Parliament.

THE Common Law of this Land is, That every freeman is subject to a tryal by Bill o Attainder in Parliament, wherein His Majesty and both Houses must necessarily concur, for that tryal and attainder is an Act of Parliament, to which all men are subject.

a *Mag. Ch. 29. 2 pars* *der in Parliament, wherein His Majesty and both Houses must necessarily concur, for that tryal and attainder is an Act of Parliament, to which all men are subject.*

Inst. f. 28, 29, 46, 48, 49, 50. a Noman shall otherwise be destroyed, &c. but composed by the lawful judgment of his Peers, or by the common law of the land. Peers to Noblemen are Noblemen, Peers to the Commons are Knights, Gentlemen, &c. Judgment of Peers refers to Peers, whose words by the order of the Law of the Land, refers to the Commons; the law of the Land is for the tryal of the life of a free House of Commoner, by Indictment, Presentment of good Commons and lawful men where the deed is done, or by Writ original of the common Law: all this is declared in *Ma, 1641. Mag. Charta c. 29. and by 25 Ed. 3. c. 4. 28 Ed. 3. c. 37 Ed. 3. c. 8. 42 Ed. c. 3.* If the Lords will try any man by an Ordinance, they destroy the excellent Act of *Mag. Charta*, and all those other good Laws.

Num. 2 pars Sir Simon de Beresford, a free Commoner of England was condemned by the Lords to death by an Ordinance, which after the Lords better considering the matter that they might be acquitted of that sentence, became suers to the King, that what they had so done in future time might not be drawn into president, because that which they had so done, was against the Law: b with this agreement the practice and usage of all time, in this Land, all

Inst. p. 50. With this agrees Sir *Jo. Lees* Case, *Rot. Par. 42 E. 3* *Num. 22, 23. 2 Inst. fol. 5.*

the free Commoners of this Kingdom have always been tryed, and acquitted or condemned in capital causes by Jurors of their equals.

An Ordinance binde th not in Law at all, *c* and but *c* See 4 *pars*
pro tempore, as the two Houses now affirm, a mans *Inst. f. 23.*
 life cannot be tryed by that which is not binding *48.232.*
 and to continue for all times, for a life lost cannot *298.292.*
 be restored. *2 pars Inst.*

By an Act of Parliament of the 1 and 2 of *Phi-*
lip and *Mary* ch. 10. It is enacted that all tryals for *f. 47.48.*
 Treason hereafter to be had, shall be according to *157.643.*
 the course of the common Law, and not otherwise. *4 H.7.f.18.*
 If the crime charged-upon any be Treason against *1 H.7.f.14.*
 the two Houses (against the Parliament it cannot *3 pars Inst.*
 be, for there is no Parliament without the King) *f.41.*
that is no Treason in Law, as appears by *25. Ed. 3.*
Chap. 2. 11. R. 2. Chap. 3. 1 Hen. 4. Ch. 10. 1 and
Philip and Mary Chap. 10. 3 part of the Institutes
14. 23.

An Act of Parliament to make any a Judge where
 he is party, is a void act; *d* for none can be a Judge *d Dr. Ba-*
 and party in the same cause; and therefore the *nam's Case,*
 House of Peers being a party touching the crime *8. part of*
 charged upon any man whom they would try by an *Cooks Re-*
 Ordinance for Treason against both Houses, can- *ports.*
 not be a Judge.

By the Petition of Right, *e* if any man deserve *e Petition*
 death, he ought to suffer the same according to *of Right.*
 the Laws of the Land established, and not other- *3 Car. Ra-*
 wise: but an Ordinance of the Lords is no esta- *gis.*
 blished law. *3 pars Inst.*

The Protestation, the Vow & Covenant, the *f.89.*
 solemn League and Covenant, the declarations of
 both Houses, had, made and published sithence
 in unnatural War, are amongst other things sworn
 and set down to be for the maintenance of the
 laws; the people of this land ought to enjoy
 the benefit of their Birth-right the Law of the
 land, and the making good of the said Protestation,
 Vow,

Vow and Covenant, League and Covenant, and Declarations, otherwise true must be said, and will be said, that there is brought in a new Arbitrary and Tyrannical Government.

If the Lords have taken away one man's life by an Ordinance, they are not bound to take any more; and the case differs in case any appeal be made from a tryal by Ordinance to a tryal at common Law, which was not done by that man whose life was taken away by an Ordinance.

The Lords ought to remember, that his Majesty and his Progenitors have made them a house of Peers, they are trusted to council him in peace, and defend him in War, his Majesty in Parliament is to consult and treat with the Peers, and with his Council at Law, Judges, his Serjeants, Attorney, and Solicitor, and Masters of the Chancery; the Lords and that Council by the respective Writs of Summons to Parliament, are to give council, the House of Commons by their Writ to perform and consent. In the House of Lords the Court of Parliament only is, for they only examine upon Oath, with them the King in person sits, and by them their erroneous judgments * (upon a Petition to his Majesty for obtaining of a Writ of Error) by the advice of the Judges, are reversed, or affirmed, &c. The Lords are to remember that their eminency and grandure is preserved by the Laws, if they leave all to will, and dishonour their King, and make nothing of the Laws, they will make nothing of themselves in the end.

And therefore it is well worth your observation what was said by Mr. John Pym a member of the House of Commons in his Speech against the Earl of Strafford, in the beginning of the Parliament, which speech is published by the express order of the House of Commons, the words are these. *The Law is that which puts a difference betwixt good and evil, betwixt just and unjust, if you take away the Law*

f. Nevils
case 8 p.
Cook Re-
ports.

64 Pars
instit. fol.
4.9.27. Ed
3. c. 1, 15.
3 part. In-
stit. f. 135.
b 1 H. 7. f.
20.
* 14 H. E.
3. c. 4.

all things will fall into a confusion, every man will become a Law unto himself, which in the depraved condition of humane nature must needs produce many great enormities: Lust will become a Law, and every Will become a Law, Covetousness and Ambition will become Laws, and what dictates, what decisions such Laws will produce, may easily be discerned, &c. They that love this Common-wealth as things now stand, will use all means to procure an Act of Oblivion, a general pardon from his Majesty, the Souldiers their arrears, and tender consciences a just and reasonable satisfaction, else we all must perish, first or last.

See 1 p.
Book dect.
pag. 140.
163.

May. 17. 1647.

God preserve His Majesty, and the Laws wherein their Lordships and the whole Kingdom are concerned.

David Jenkins prisoner in the
Tower of London.

THE

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The CORDIAL of Judge JENKINS, for the good People of London.

In a Reply to a thing called, *An Answer to the poysonous seditious Paper of Mr. David Jenkins.* By H. P. Barister of *Lincolns-Inn.* Printed in the Year 1647.

AFTER the said Mr. H. P. had made a recital of the Heads of my *Vindication*, he deduced his Answer unto these eight Particulars, which follow verbatim.

1.

It cannot be denied, but the Parliament sits by the King's Writ; nay, if Statute Law be greater than the King's Writ, it cannot be denied but the Parliament sits, or ought to sit by something greater than the King's Writ: And if it be confessed that the Parliament sits by the King's Writ, but does not act by the King's Writ, then it must follow, that the Parliament is a void vain Court, and sits to no purpose; nay, it must also follow, that the Parliament is of less authority, and of less use than any other inferiour Court; forasmuch as it is not in the King's power to controul other Courts, or to prevent them from sitting or acting.

2.

This is a gross non sequitur, the King's power is in himself; Ergo, it is not derived to, nor does reside virtually in the Parliament. For the light of the Sun remains imbodyed, and unexhausted in the Globe of the Sun, at the same time as it is diffused and displayed through all the body of the Air; and who

D

sees

sees not that the King, without emptying himself, gives Commissions daily of Oyer and Terminer to others; which yet himself can neither suspend nor elude? But for my part I conceive it is a great error to infer that the Parliament hath only the King's power, because it hath the King's power in it; for it seems to me, that the Parliament does both sit and act by concurrent power, devolved both from the King and Kingdom; and in this somethings are more obvious and apparent than in others. For by what power does the Parliament grant Subsidies to the King? If only by the power which the King gives, then the King may take Subsidies without any grant from the Parliament: And if it be so by a power, which the people give to the Parliament; then it will follow, the Parliament hath a power given both by King and Kingdom.

3.
The sending Propositions to the King, and desiring his concurrence, is scarce worth an Answer; for subjects may humbly petition for that which is their strict right and property. Nay, it may sometimes beseem a Superiour to prefer suit to an inferiour for matters in themselves due. God himself hath not utterly disdained to beseech his own miserable, impious, unworthy Creatures: besides, 'tis not our Tenet, that the King hath no power, because he hath not all power; nor that the King cannot at all promote our happiness, because he hath no just claim to procure our ruine.

4.
We affirm not, that the King's power is separated from his Person, so as the two Spencers affirmed, neither do we frame Conclusions out of that separation, as the two Spencers did, either that the King may be removed for Misdemeanours, or performed per aspertè; or that the Subject is bound to govern in ayd of him; we only say, that his power is distinguishable from his person, and when he himself makes

makes a distinction betwixt them, commanding one thing by his Legal Writs, Courts and Offices, and commanding another thing extrajudicially by word of mouth, Letters, or Ministers, we are to obey his power rather than his person.

5.

We take not from the King all power of pardoning Delinquents, we only say, it is not proper to him *quarto modo*: For if the King pardon him which hath murdered my Son, his pardon shall not cut me off from my appeal: and 'tis more unreasonable, that the King's pardon should make a whole State which hath suffered remediless, than any private man. So if the King should deny indemnity to those which in the fury of War have done things unjustifiable by the Laws of Peace, and thereby keep the wounds of the State from being bound up, 'tis equitable that an Act of Indemnity should be made forcible another way. And if his will not hold, yet this is no good consequence; the King is absolute in point of pardons, therefore he is absolute in all things else; and the Parliament hath no power to discharge Delinquencies, therefore it hath no power in other matters.

6.

The Parliament hath declared the King to be in no condition to Govern: but this must not be interpreted rigidly, and without distinction; for if the King with his Sword drawn in his hand, and pursuing the Parliament and there Adherents as Rebels, be not fit for all Acts of Government; yet 'tis not hereby insinuated, that he is divested of the habit or right of Governing: If he be unqualified now, he is not unqualified for the future; if he may not do things destructive to the Parliament, he is not barred from returning to the Parliament, or doing justice to the Parliament. This is a frivolous Cavil, and subterfuge.

4.

We swear, that the King is our supream Governour over all Persons, and in all Causes; but we do not swear he is above all Law, nor above the safety of his people, which is the end of the Law, and indeed Paramount to the Law it self. If he be above Law, or liable to no restraint of our Law, then we are no freer then the French or the Turks; and if he be above the prime end of Law, common safety, then we are not free as the French or Turks: For if the total subversion of the French or Turk were attempted, they might by God's Law, imprinted in the Book of Nature, justifie a self-defence; but we must remedilessly perish, when the King pleases to command our Throats. Besides, how atchieved the King of England such a Supremacy above all Law, and the community it self, for whose behoof Law was made? If God's Donation be pleaded, which is not special to him, or different from what other Kings may pretend to, then to what purpose serve our Laws; nay, to what purpose serve the Laws of other Countries? For by this general Donation, all Nations are condemned to all servitude as well as we. If the Law of this Land be appealed to, what Books hath Mr. Jenkins read? where hath he found out that *Lex Regia*, whereby the people of England have given away from themselves all right in themselves? Some of our Books tell us, that we are more free than the French; that the King cannot oppress us in our Persons or Estates, by imprisonment, denying Justice: Or laying Taxes without our consents. Other Books tells us, that the safety of the people, is the supream Law, and that the King hath both God and the Law for his Superiour. But all this is nothing to learned Mr. Jenkins.

8.

We admit that no Acts of Parliament are compleat, or formally binding, without the King's assent: yet this is still to be denied, that therefore with-

without this assent particularly exprest, the two Houses can do nothing, nor have any vertual power at all; no, not to examine Mr. Jenkins, nor to doe any other thing of like nature, though in order to publiek justice and safety. I have done, and wish Mr. Jenkins would call in and lick up again his black infamous execrable reproaches, so filthily vomited out against the Parliament.

To the first.

I Was examined by a Committee appointed by the House of Commons: I say, and said, that the House of Commons have no power to examine me, for that it is no Court; every Court hath power to examine upon Oath; this power the House of Commons never claimed. The Court of Pye-powders, Court Baron, Hundred Court, County Court, and every other Court of Record, or not of Record, hath power to examine upon Oath; and an examination without Oath, is a communication only; examination in Law is upon Oath.

There is no Court without a power of tryal; the House of Commons hath no power to try any Office, nor ever practised it by Bill, Indictment, Information, Plaint, or Original Writ, to reduce it to tryal; nor to try it by Verdict, Demurrer, or Examination of Witnesses upon Oath, without which there can be no condemnation or judgment; and that which can attain to no reasonable end, the Law rejects as a thing inutile and useles; *Sapiens incipit à fine.*

The Writs whereby they are called gives them power, *Ad faciendum & consentiendum*; to what? to such things *quæ ibidem de communi Consilio ordinari contigerint*, (*viz.*) in the Parliament: This makes nothing at all for a Court for the House of Commons; that *consilium* which that

5 H.4.c.3.
5 H.6. 46.
19 H.6.43.
35 H.6.5.

Sir Ambrose
Mayne's case
Cook. part.
Reports.
Lit. 2. lib.
Sect. 194. 6.
H.4.1.

4 Pars.instit.
fol.4. & 9.

VVrit intends, is cleared partly by the Writ for choosing Knights, &c. For the King by that Writ, is said to resolve to consult and treat with the Prelates and Peers of the Kingdom, for and touching the great concernments of the Common-wealth, (for the King never sits in the House of Commons;) and this also is made evident by the Writs to the Prelates, Peers, Judges, and to his Council at Law; the words in their VVrit are, *To appear and attend the Parliament, Consilium impensuri*, the one doth consuleve, the other *facere & consentire*.

The House of Lords, where the King sits in person, assisted by his Lords, Judges, Serjeants, Attorney, Solicitor, Masters of the Chancery, is a Court of Record to many purposes; set down in the Books of Law, and the Statutes of the Land, and that Court is only in the House of Lords, where the King sits.

A Court must either be by the King's Patent, Statute-law, or by the Common-law, which is common and constant usage; the House of Commons hath no Patent to be a Court, nor Statute-law to be a Court, nor common usage; they have no Journal Book, but since E. 6. time: VVas there ever Fine by the House of Commons estreated into the *Exchequer*? For Murther or Felony they can imprison no man, much less for Treason; that House which cannot do the less, cannot do the greater.

It is ordained, that no man shall be imprisoned, or put out of his Franchise by the King or his Council, but upon Indictment or Presentment of his good and lawfull Neighbours, where the Deed is done, or by Original VVrit at the Common-law; and so is *Lex terra*, the Law of the Land mentioned in *Magna Charta*, cap. 29. expounded, and the said *Magna Charta*, and *Charta de foresta*, are declared by the Statute of

7 H. 6. 28.

1 H. 7. 20.

23 E. 3. ca. 5.

4 Pars. Instit.

pag. 21.

Plowd. Com.

319.

25 E. 3. c. 4.

3 Car. Peti-

son of right.

23 E. 1. c. 1. to be the Common-law of the Land. All Judges and Commissioners are to proceed *Secundum legem & consuetudinem Regni Angliæ*, as appears by all proceedings in all Courts, and by all Commissions: and therefore the House of Commons by themselves, proceeding not by Indictment, Presentment, or Original Writ, have no power to imprison men, or put them out of their Franchise.

This no way trenches upon the Parliament; for it is in Law, no Parliament without King and both Houses: I have only in my Paper delivered to Mr. Corbet, applyed my self to that Committee, that had no power to examine me; but I never thought, said, or wrote, that the Parliament had no power to examine me: the Law and custom of this Land, is, that a Parliament hath power over my life, liberty, land and goods, and over every other subject, but the House of Commons of it self hath no such power.

For the Lord Chief Justice's relation, that the House of Commons have imposed Fines, and imprisoned men in Queen Elizabeth's time, and since; few Facts of late time never questioned, make no power nor Court; a *facto ad jus* is no good argument; for the words of the Statute of 6 H. 8. cap. 16. that a Licence to depart from the House of Commons for any Member thereof, is to be entred of Record in the Book of the Clerk of the Parliament, appointed, or to be appointed for that House, doth not conclude that the House of Commons is a Court of Record.

For first, that Law of 6 H. 8. c. 26. handles no such question, as that whether the House of Commons be a Court; it is a Maxime in all Laws, *Lex aliud trahens nil probet*, the word (Record) there mentioned, is only a Memorial of what was done and entred in a Book. A Plaint removed out of the County-court to the Court of the

4 Pars. Instit. pag. 1.

3. Pars. Instit. p. 23.

12 H. 7. 20. Princes case:

8 Pars Cook.

1 Pars. Instit. p. 139.

14 H. 8. 3. Dyer 28. H. 8. 40.

1 Pars. Instit. 19. b.

4 Pars. Instit. c. Parl.

Hobart's Reports, fol. 152.

Hobart's Reports, fol. 154.

Common Pleas, hath these words in the Writ of remove, *Recordari facias loquelam, &c.* and yet the County-court is no Court of Record; and so for ancient Demesne in a Writ of false Judgment, the words are *Recordari facias loquelam, &c.* and yet the Court of ancient Demesne is no Court of Record: and so of a Court Baron, the Law and Custom of England must be preserved, or England will be destroyed, & have neither Law nor custom.

Fitz, Nat.

Br. 70.

Fitz. Nat.

Br. 13.

12 H. 4. 33.

34 H. 6. 49.

Let any man shew me, that the Court of Lords, or the House of Commons in any age hath made any man a Delinquent (*Rege dissentiente*) the King contradicting it under his great Seal. *Mischel*, and others of late were condemned by the prosecution of the House of Commons in K. James his time; did King James ever contradict it? and so of ancient times, where the House of Peers condemned the Lord *Latimer* in 50 E. 3. The King's Pardon freed him: which shews clearly, that the King's expresse or implied assent must of necessity be had to make a Delinquent. The execution of the Sentence is in the King's Name.

4 Part. In-

stit. Tit.

Parliam.

pag. 23.

The Gent. saith, *That the Parliament sits, or ought to sit by something greater than the King's Writ, &c.*

4 Pars. Inst.

p. 4. & 6.

No Parliament did ever sit without the King's Writ, nor could ever Parliament begin without the King's Presence in person, or by a Guardian of England, by Patent under the King's Great Seal, the King being *in remotis*, or by Commission under the Great Seal to certain Lords, representing the King's person, and it hath been thus in all ages, unto this Session of Parliament, wherein His Majesty hath been pressed, and hath passed two acts of Parliament, one for a Triennial Parliament, and another for a perpetual, if the Houses please, to satisfy their desires; how these two acts agree one with another, and with the Statute in E. the third's time, where Parliaments are ordained to be holden every year, and what mischiefs to the people of this Land

4 E. 3. c. 14.

36 E. 3. c.

10. 21 Jac.

the Act of

limitation

of Actions,

c. 22.

such

such length of Parliaments will produce by protections & privileges to free them and their menial servants from all debts during their lives, if they please to continue it so long, and how destructive to mens actions against them, by reason of the Statute of Limitations, which confines their actions to certain years, and many other inconveniences of greater importance, is easie to understand.

How can any man affirm, that the two Houses of Parliament do act now by the King's Writ, which relates to Council and Treaty with the King, concerning the King, the defence of his Kingdom and of the Church of *England*, these are three points which it tends to, as appears by the Writ. They keep their King prisoner at *Holmby*, and will not suffer him to consult and treat with them. They have made a vow and a covenant to assist the forces raised and continued by both houses against the forces raised by the King without their consent and to the same effect have devised the Oath which they call the *Negative Oath*: Is this to defend the King's Kingdom, or their Kingdom?

4 pars. In-
stit. p. 14.
Vow and
Covenant.
P. 11.

When by their Solemn League and Covenant they extirpate Bishops, Deans and Chapters, root and branch, is this to defend the Church of *England*? (that Church must necessarily be meant, that was the Church of *England*, when the said Writ bore test) they were not summoned to defend a Church that was not in being; to destroy and defend the Church are very contrary things; the Church is not defended, when they take away and sell the Lands of the Church.

3 pars,
Cook
Dean and
Chapter of
Norwich.

The Gentl. saith, *The King cannot trouble other Courts of Justice, or prevent them from sitting, or acting, and therefore not the two Houses, &c.* It is true, the King cannot controul or prevent his other Courts, for that they are his Ordinary Courts of Common Justice; to Administer Common Right unto

14 H. 8. 3.
36 Hen. 8.
Dyer. 60.
4 Pars, In-
stit. p. 1.

unto all men, according to the fixed Laws. The Houses make no Court without the King, they are no body corporate without the King, nor Parliament without the King, they all make one corporate body, one Court called the *Parliament*, whereof the King is the Head, and the Court is in the Lords House, where the King is present. And as a man is no man without a head, so the Houses severed from the King, as now they are, have no power at all; and they themselves by levying VVar against the King, and imprisoning of him, have made the Statute for not dissolving, adjourning, or proroguing this Parliament of no effect, by the said Acts of their own; they sit to no purpose without his assent to their Bills; they will not suffer him to consult with them, and treat and reason with them, whereby He may discern what Bills are fit to pass, and what not, which in all ages the Kings of this Land have enjoyed as their undoubted Rights; and therefore they sit to no purpose by their own disobedience and fault.

47 H. 8. c.
24. 28. H. 8.
31. Dyer.
3 R. 3. 12.

For the ordinary Courts at *Westminster*, the Judges in all those Courts are Judges by the King's Patent or VVrit, otherwise they are no Judges: The Houses can make no Judges, they are no Judges at all who are made by them; the whole and sole power of making Judges belongs to the King: the King cannot controul or prevent his own Judges from sitting and acting, but the Houses He may, for they are not the Kings Judges, but the Judges of the two Houses. In his other Courts, the King commits his power to his Judges by his Patent, and they are sworn to doe common right to all men, and the King is sworn not to let them from so doing, the King cannot judge in those Courts, nor controul; but the King is both judge and Controul in the Court of Parliament: *Quoad* Acts for his assent or dissent, doth give life or death to all Bills. Many
Laws.

Lawyers have much to answer to God, this kingdom, and to posterity, for pulling the People of this Land with such Fancies, as the Gentleman who wrote the Answer to my Paper, and others have published in these Troubles, which have been none of the least causes of the raising and continuing of them: And so I have done with the first part of this Answer.

AD. 2.

For the *Non sequitur*, in the second Section of the Gentl. Answer, the Antecedent and the Consequent are his own.

*Quem recitas meus est (ô Fidentine!) libellus:
Sed male deum recitas incipit esse tuus.*

My words are, that the king is not virtually in the two Houses at *Westminster*, to enable them to grant pardons, for that whole and sole power by the Law belongs to the king: My paper hath no such thing, as that the king's power cannot be derived to others, or the vertue of his power: For his power, and the vertue of his power, is in all Patents to his Judges, in Charters to Corporations, in Commissions of all sorts, and in the Parliament Assembled by force of his Writ of Summons, so long as they obey him: but when they renounce that power, and claim it not from the King, and declare to the Kingdom that he is not in condition to govern, and imprison him, and usurp to themselves all Royal authority, as the two Houses now doe, no reasonable man can affirm that they Act by the power of their prisoner, who hath no power to give them, that by force of armes take all power to themselves.

27. H. 8. c.

24.

The Gentl. saith, The King grants Commissions dayly of Oyer & Terminer, which he cannot frustrate nor elude. The King may revoke and discharge the commission by his Writ, as he may remove all Judges, and place other men in their room; and any

any Kings death determines all the Judges Patents at *Westminster Hall*, Commission of *Oyer and Terminer*, &c. and so he might dissolve both houses in all times by his Writ under the Great Seal, untill that in this Parliament, by his own cenceffion, the king of his goodness hath secluded himself; which goodness hath been full ill requited.

The Gentl. affirms, *That the power the Parliament hath, is concurrent from the King and Kingdom*; which he conceives is provided by the grant of Subsidies to the King by the Parliament. The mistaking of this word (*Parliament*) hath been mischievous in these times to this Land, and it is affectedly mistaken, which makes the sin the greater, for the two Houses are not the Parliament, as before is declared, and at this time so to inculcate it; when all men know that of the 120 Peers of the Kingdom, who were temporal Peers before the Troubles: there are now not above 30 in the Lords House, and in the House of Commons about 200 of the principal Gentl. of the Kingdom left the House and adhered to his Majesty, who is imprisoned by them shews no such candor as is to be desired.

It is true, that no Tallage can be laid upon the people of this Land but by their consent in Parliament, as appeareth by the Laws mentioned in the Margent; but you shall find in *M. Selden's* learned Book, called *Mare Clausum*, a number of presidents in *Henry the thirds* time for Ship-mony justly condemned this Parliament, to the which his Majesty assented, and in truth that Ship-money was condemned before by the said 2 Statutes of 25 E. 1. & 34 E. 1. *de Tallagio non concedendo*. *Dangelet, Englishery*, and many grievous burthens were laid upon the people and borne untill that memorable Princes time. But I am of opinion, that the Common Law of the Land did alwaies restrain Kings from all Subsidies and Tallages, but by consent in Parliament; which doth appear by *Magna Charta*, the

4 E. 4. 39.
5 E. 4. 4.
1 Eliz. Dy.
er. 165.
1 Mar.
Brooks
case 447.
4 Pars, In-
stit. p.

25. E. 1.
confirma-
tio char-
tarum
chap. 6. 34
E. 1. c. 1. de
Tallagio
non conce-
dendo.

the last Chapter, where the Prelates, Lords, and Commonalty gave the king the fifteenth part of their moveables. In truth it is no manner of consequence, because the king cannot take what he pleaseth of the subjects goods, that therefore they have a concurrent power in Parliament, there have been many Parliaments & no subsidies granted: Parliaments may be without subsidies, but subsidies cannot be without Parliaments: of ancient times Parliaments rarely granted any, unless it were in the time of foreign Wars; and in my time, *Q. Elizabeth* refused a subsidy granted in Parliament, and in the Parliament 1 *Jac.* none were granted. The Gent. should make a conscience of blinding the people with such untrue colours to the ruine of the king and people.

A D. 3.

The Gentl. affirms, *That the sending propositions to the K. and desiring his concurrence, is scarce worth any answer, for Subjects may humbly petition for that which is there strict right and property, &c.* The Propositions sent to Newcastle, are in print; wherein the two Houses are so far from humbly Petitioning, that they stile not themselves his Majesty's subjects, as appears by the Propositions.

That they have a strict right or property to any one of these Propositions is a strange assertion, every one of them being against the Laws now in force. Have the two Houses a strict right and property, to lay upon the people, what taxes they shall judge meet? To pardon all Treasons, &c. that is one of their propositions. Have they a strict right and property to pardon themselves? and so for all the rest of their Propositions.

These Propositions have been Voted by both Houses, the King's assent (they being drawn into bills) makes them Acts of Parliament: Hath the King no right to assent or disassent? Was the sending but a complement? All our Law-books and Statutes speak otherwise. This Gentl. and others, must give an account one time or other for such delusions put upon the people.

A D. 4.

The Gent. saith, *They affirm not, that the Kings power is seperated from His Person, so as the two Spencers affirmed, &c.* His Majesties person is now

12 H. 7. 20.

1 Jac. c. 1.

1 Car. c. 7.

now at *Holmby* under their Guards; have they not severed his power from him, when by no power they have left him; he can have two of his Chaplains, who have not taken their Covenant, to attend him for the exercise of his Conscience?

15 Edw.2. For the three Conclusions of the *Spencers*, do
Ex illium not the two Houses act every of them? They say,
Hugonis His Majesty hath broken his Trust, touching the
Calvin's Government of his people. They have raised Ar-
case. 1 E. mies to take him, they have taken him and im-
c.2. 7 pars. prisoned him; they govern themselves; they
Reports make Laws, impose Taxes, make Judges, Sheriffs,
11. and take upon them *Omnia insignia summæ potestatis*: Is not this to remove the King for Misde-
meanours? to reform *per asperitè*, to govern in
aid of him; the three Conclusions of the *Spencers*? Do they think the good people of England
are become stupid, and will not at length see
these things?

Plowd. 4. The Gentleman saith, *They do not seperate his*
Eli.2. 13. *power from his person, but distinguish it, &c.* His pow-
the King's er is in his Legal Writs, Courts, and Officers; when
power and they counterfeite the great Seal, and seal Writs
his person with the same, make Judges themselves, Courts
are indi- and Officers, by their own Ordinances against his
visible. consent, declared under his true Great Seal of
England, (not by word of Mouth, Letters, or Mi-
nisters only) their Seal is obeyed, their own Writs,
their own Judges, their own Courts, their own
Officers, and not the Kings: The time will come
when such strange actions and discourses will be
lamented.

A.D. 3.

The Gentleman goes on, *We take not from the*
King all power of pardoning Delinquents, we only say,
it is not proper to him quarto modo, &c. What do
you mean by *quarto modo*? I am sure, *Omnis Rex*
Anglia, solus Rex & semper Rex, can do it, and
none

none else ; reade the books of the Law to this purpose, collected by that reverend and learned Judge *Stanford*, from all Antiquity to his time, who died in the last year of King *Philip* and Queen *Marys* Reign, you shall find this a truth undeniable ; and this power was never questioned in any Age in any Book by any untill this time, that every thing is put to the question : You Gentlemen, who profess the Law, and maintain the party against the King, return at length, and bring not so much scandal upon the Law, (which preserves all) by publishing such incredible things.

We hold only that the law holds, the King's Braet. lib. 8. Prerogative and the subjects Liberty are determined, and bounded, and admeasured by the written Law what they are ; we doe not hold the King to have any more power, neither doth his Majesty claim any other but what the Law gives him ; the two Houses by the Law of this land, have no colour of power, either to make Delinquents, or pardon Delinquents, the King contradicting : (and the Army under Sir *Tho. Fairfax* (howbeit but Souldiers) doe now understand that to be Law, and doe now evidently see, and assuredly know, that it is not an Ordinance of the two Houses, but an act of Parliament, made by the King, Lords, and Commons that will secure them, and let this Army remember their executed fellow-Souldiers, and the Law was alwaies so taken by all men untill these troubles ; that have begot Monsters of opinions.

A D. 6.

This Gentleman saies, *Toe Parliament bath declared the King to be in no condition to govern, &c.*

There is no end of your distinctions, I and you profess the Law ; shew me Law for your distinctions or letter, syllable, or line, in any Age in the books of the Law, that the King may in one time be in no condition to govern, and yet have the habit of governing, and another time he may (*viz.*) when the two Houses will suffer him : The Law saith thus, *Ubi lex non distinguit, non est distinguendum.*

He saies, *the King is not barred from returning to his Parliament.*

ment (as he calls the two Houses) he knows the contrary; the whole City knows the contrary, *Nos juris consulti sumus sacerdotes* (as *Justinian* the Emperour hath it, in the first Book of his *Institutions*) and therefore knowledge and truth should come from our lips : Worthy and ingenious men well remember, and reflect upon that passage of that good and wise man, *Seneca*, *Non quaeritur, sed quaerendum*; follow not the ways of the Lawyers of the House of Commons: God forgive them, I am sure the King will, if they be wise and seek it in time.

A D. 7.

1. Eliz. cha. The Gent. says, *We swear that the King is our*
 1. Cawdreys *supream Governor over all persons and in all causes,*
 case 5. pars. *&c.* Why hath he left out the word (*only*) for
 fol. 1. the Oath the members now take, is that King

Charles is now the only and *Supream Governor* in all causes, over all persons, and yet they keep their only *Supream Govern.* now in prison, and act now in *Parl.* by virtue of their prisoners writ, and by a concurrent power in this *Parl.* and by their own strict right and property (as the Gentle-

man affirms in his Answer) These things agree well with their Oath, that the King is the only *Supream Governor* in all causes over all persons, This Oath is taken now in the *Parliament* time by all the Members of the House of Commons, and is required by the Law to be taken in all *Parliaments*, otherwise they have no power, nor colour to meddle with the publick Affairs.

This Oath being taken in *Parliament*, that *the King is the only and supream Governour in all Causes*, then it follows in *Parliament Causes*, over all persons, then over the two Houses: Let them keep this Oath, and we shall be sure of peace in the Land; and good Lawyers ought to desire peace both for the publick good, and their private, and not dishonour that Noble profession, as many do in this miserable time.

The Gent. says, *We do not swear that the King is above all Law, nor above the safety of his people*; neither do we so swear, but his Majesty, and we will swear to the contrary, and have sworn, and have made good, and will by God's Grace make good our Oath to the world, that the King is not above the Law,

Law, nor above the safety of his people; the Law and the safety of his people, are his safety, his honour and his strength.

A D. 8.

The Gent. concludes, That *Acts of Parliament* are not formally binding; nor complete without the King's assent, yet the Houses have a virtual power without the King's particular assent, to do things in order to publick justice and safety; (*Ver.*) In setting up the Excise, in raising & maintaining of Armies, in taxing the people at pleasure with Fifth and Twentieth part, Fifty Subsidies, Sequestrations, Loans, Compositions, Imprisoning the King, abolishing the Common Prayer Book, selling the Church Lands, &c. all these are in order to the publick justice and safety.

Mr. H. P. you are of my profession, I beseech you, for the good of your Country, for the honour of our Science, persuade your self and others as much as in you lies, to believe and follow the monition and counsel of that memorable, reverend, and profoundly learned in the Laws and Customs of the Land, the Lord Cooke, who 3 Part. Inst. p. 36. writes as becomes a great and a learned Judge of the Law (a person much magnified by the two Houses) in these words; Peruse over all Books, Records and Histories, and you shall find a Principle in Law, a Rule in Reason, and a Trial in Experience; that Treason doth ever produce fatal and final destruction to the Offender, and never attains to the desired end: (two incidents inseparably thereunto:) and therefore let all men abandon it, as the poisonous bait of the Devil, and follow the Precept in holy Scripture, SERVE GOD, HONOUR THE KING, AND HAVE NO COMPANY WITH THE SEDITIOUS.

Conclusion.

I say again, that without an Act of Oblivion, a gracious general Pardon from his Majesty, the Arrears of the Souldiers paid, a favourable regard had to tender Consciences; there will be neither Truth nor Peace in this Land, nor any man secure of any thing he hath.

By me David Jenkins, Prisoner in the Tower

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By me David Jenkins, Prisoner in the Tower.

A Dis-

A Discourse touching the Inconveniencies of a long-continued
 PARLIAMENT

A Perpetual Parliament is repugnant to the Act made this Parliament; for a *Triennial Parliament*; for how can every three years a Parliament begin, if this be perpetual which may be so if the two Houses please?

2. An adjournment of the Parliament makes no Session, *4 pars. inst. f. 27.* Howbeit before the adjournment, the King gives his Royal Assent to some Bills; *See ibid.*

3. There is no Session till a Prorogation or Dissolution of the Parliament.

4. This Parliament as appears by the Act *Plow. com. 3 H.* for not dissolving thereof, for down in the 3.8. Bro. *relati.* printed Statutes of this Parliament, *f. 138.* on. 35 Bro. *Par.* cannot be prorogued or dissolved, but by 85. *Dier. 1 Ma-* Act of Parliament. There hath been as yet *riz. 85.* no Act of Parliament in that behalf; and

therefore all the Acts of this Parliament are Acts of one Session.

5. All Acts of one Session relate to the first day of the Parliament, and all the Acts of such a Parliament, are Acts of one day: So the Act for the *Triennial*, and the Act for this *Perpetual*, are two Acts of one day by the Law.

6. *4 E. 3. c. & 36 Ed. 3. c. 10.* A Parliament is to be holden once every year, and more often if need shall be; those Acts are confirmed by the Act for the *Triennial Parliament*. How doth a *Perpetual Parliament* agree with a Parliament once every year, or with the intention of those Laws? How doth a Parliament every three years agree with a Parliament for ever, which may be if the two Houses please.

7. The result is this, at one day in Law this Parliament two Acts have passed (for howbeit the one was in 16 *Car.* and the other in 17 *Car.* yet both in Law, are Acts of one day) the one saith, there shall be a *Triennial Parliament* after the end of the sitting of this Parliament: The other, this Parliament shall sit for ever if they please. The one will have a Parliament with an end, the other a Parliament without an end.

When

When an Act of Parliament is against common Right or Reason, or repugnant, or impossible to be performed, the Common-law shall controul it, and adjudge this Act to be void; they are the words of the Law. 1 Pars Doct. Bingham's case, f. 118. 8 E. 3. 3. 20. 33 E. cessavit, 32. 27. H. 6. Annuity 41. 1 Eliz. Dier 313.

An Act of Parliament, that a man shall be Judge in his own cause, is a void Act. *Hobbs* f. 120.

Begin with Common Right. It is against Common Right, that indebted men should not pay their Debts: That if any Member of the House of Commons doe any Subject wrong by dispossessing him of his Land, or dispossessioning him of his Goods, or blasting of his fame, or doing violence to his person, that such persons during their lives should not be questioned by a Privilege of Parliament; and that extended also to many other beside themselves, Common Right doth abhor these Enormities, which a perpetual Parliament doth beget, besides the utter destruction of all mens actions, real, personal, or mixt, who have to do with Parliament-men; by the Statute of *Limitation*, which confines Suits to certain years. 21 *Jac.* c. 16.

For Common Reason Parliaments were ordained for Remedies to redress publick Grievances. It is against Reason they should make publick and insufferable Grievances. The Law of the Land allows no protection for any man employed in the service of the Kingdom, but for a year, to be free from Suits, and in many Suits none at all, howbeit he be in such service; but a Parliament perpetual may prove a Protection, not for a year, but for ever, which is against all manner of reason. 39 *H. 6.* 39.

For impossibility. The death of His Majesty (whose life God prolong) dissolves it necessarily; for the Writ of Summons is, *Carolus Rex in hoc individuo*; and *Carolus Rex* is in this particular, *Habiturus colloquium & tractatum cum prelati & proceribus, &c.* King Charles being to have Conference and Treaty with his Prelates and Peers, *Carolus Rex* cannot have *colloquium & tractatum*, Conference and Treaty when he is deceased, and therefore it is as impossible for any Parliament to continue as long as they please, as for a Parliament to make a dead man alive. 2 *H. 5.* *Confr. Title Parl.* 3. parts.

For

For repugnancy. That which is but for a time cannot be affirmed to have continuance for ever, it is repugnant.

The end of the Act 17. *Caroli Regis*, which is to continue at pleasure, is in the said Act expressed to be to raise credit for money for these three purposes. 1. For relief of his Majestie's Army and people in the North. 2. For preventing the imminent danger of the Kingdom. 3. For supply of other his Majestie's present and urgent occasions. These ends are ended, the relief of that Army, the imminent danger supposed, was six years ago, the supply of his Majesty, hath been a supply against him; take away the end, the means thereto are to no purpose: take away the cause, the effect ceaseth. And therefore the three ends of this Act being determined, it agreeth with Law and Reason, the Act should end, the Law rejects things unprofitable and useless. *Sir Anthony Maine's Case, 3. pars. 1. H. 46. Litt. cap. Villen.*

A perpetual Parliament (besides that it incites men to self-ends, destructive of the publick, of which the whole Kingdom hath had sufficient experience) will be a constant charge to the Kingdom; for that every County and Borough, who send Members to the Parliament, are by the Law to pay Wages to their Parliament-men, which to many Countries will amount above some Subsidies yearly. There are many poor Borough-Towns in each County of this Kingdom, who being to maintain two Burgesses in Parliament, will be quickly beggered, if the Parliament have no end: For all which Reasons it is clear, that such long continuance of Parliaments, will in stead of a Remedy (which is, and ought to be the proper and true ends of Parliaments) become an insufferable Grievance and Oppression to all the people of the Land.

The Writ of Summons this Parliament is the Basis and Foundation of the Parliament. If the Foundation be destroyed the Parliament falls. The Assembly of Parliament is for 3 purposes. *Rex est habiturus colloquium & tractatum cum Prelatis, Magnatibus & Proceribus super arduis negotiis, concernentibus.* Primo, Nos. Secundo, *Defensionem regni nostri.* Tertio, *Defensionem Ecclesie Anglicane.* This Parliament hath overthrown this Foundation in all three parts, 1. *Nos.* The King they have chased him away, and imprisoned him they have voted no Prelates, and that a number of other Lords

about

about forty in the City must not come to the House, and about forty more are out of Town, the *colloquium & tractatus* are made void thereby. For the King cannot consult and treat there with men removed from thence, 2. *Defensionem regni nostri*, that is gone, they have made it their Kingdom, not his, for they have usurped all his Sovereignty, 3. *Defensionem Ecclesie Anglicanae*, that is gone, that *Ecclesia Anglicana* must be understood necessarily that Church, that at the test of the writ, was *Ecclesia Anglicana*, they have destroyed that too. So now these men would be called a Parliament, having abated, quashed, and made nothing of the Writ, whereby they were summoned and assembled: If the Writ be made void, all the Process is void also: that House must needs fall, where the Foundation is overthrown, *Sublato fundamento opus cadit*, the foundation being taken away, the work falls, is both a Maxim in Law, and Reason.

For some years past, there is no crime from treason to trespass, but they are guilty of: all Treasons, Felonies, Robberies, Trespasses are *contra pacem, coronam & dignitatem Regis*, against the peace, Crown and dignity of the King; as appears by all Indictments in all ages, *Pax Regis* the King's peace, *Corona Regis*, the King's Crown, *Dignitas Regis*, the King's Dignity, are all trod under foot, & made nothing; *Pax Regis*, the peace of the King is become a warr against the King, his Dignity put into prison, and the Crown put upon their own Heads.

All the Judges of *England*, have resolved, that Noblemen committing Treason, have forfeited their office and Dignity; *Their Office is to counsel the King in time of peace, to defend him in time of War*, and therefore those men against the duty and end of their Dignity, taking not onely Councill, but Arms also to destroy him, and being thereof attaint by due course of Law, by a tacite condition annexed to the estate of their Dignity, have forfeited the same, they are the words of the Law, and therefore they have made themselves incapable to be Members of the Upper House.

Nevil's case.
7. part. 34.
2. Jac.

The Oppressions of the people.

Briberies, Extortions, Monopolies, ought to be inquired after

after by the House of Commons, and complained of to the King and Lords, what have they done ?

The House of Commons cannot by the Law, commit any man to prison who is not of the said House, for Treason, Murther or Felony, or any thing, but for the disturbance of the publick peace by the privilege of the whole body.

They have no power by the writ, which the King issueth to elect and return members of that House, so to do. For the writ for them is only *ad faciendum & consentiendum*, to those things, whereof his Majesty shall consult and treat with his Prelates and Nobles, *& de communicatione regni* shall be there ordained, as appears by the Writ. There is no separate power given over the King's people to them, but

4. pars. inst. only *ad faciendum ad consentiendum*, and in all
23. 24. 25. times this hath been expounded and restrained to that which concerned their own members in relation to the publick Service, as they are members of the corporate body of the Parliament, whereof the K. is the head.

But that the House of Commons have committed any man for Treason, Murther or Felony, or for any offence that had no relation to a Member of the House of Coms. as it is against law and reason, so no instance can be given to this Parliament.

All Questions and Tryals where witness are examined, the Examination is upon oath by the Law, by all our Books, Statutes, every daies practice. Examination without an Oath, is but a loose discourse; therefore the House of Commons not claiming power to give oath, have no power to examin any man. 9. H. 6. 41. 22 E. 3. 22. 3 H. 6. 8. 3 H. 6. 46.

No man shall be imprisoned by the K. or his Council, unless it be by Indictment, presentment of his good and lawful Neighbors where such deeds be done, in due manner; or by process made by Writ Original at the Common Law: this Statute rehearseth *Mag. Charta*, p. 29. and expounds *Lex terra*, the Law of the Land there mentioned: this Law binds all men, and the House of Commons (for they say they are of the King's Council) in all points, but only against the disturbers of the service of the Parliament; and therefore the Imprisonment of several persons who are not their Members, and for no disturbance to their Members is utterly against the Law of the Land, and the

Fran-

Franchise of the Freemen of this Realm: 25 E. 3. c. 4. Petition of Right: 3 Car.

Cui non licet quod minus, non licet quod maius; he who may not do what is less, may not doe what is greater, they cannot commit a Man for Murder or Felony, much less for Treason, No Court can fine and imprison, but a Court of Record, the House of Commons is no Court of Record, the House of the Lords where the King is in person, his Nobles and his Judges, and Council at Law, the Masters of the Chance-

8 Pars,

Cook. 120.

27 H. 6. 8.

ry assisting, is a Court of Record, and that is the Court of Parliament, where the *Colloquium & Tractatus* is. The House of Commons may present grievances, grant or not grant Ayds, consent or not consent to new Laws, but for fining or imprisoning any but as aforesaid, is but of a late date, and no ancient usage: They have no Journall Book, but sithence E. 6. time, 6. H. 8. cap. 1. doth not prove the House of Commons to be a Court of Record, it mentions only to be entred on Record in the Book of the Clerk of the Parliament, if any Member depart into the Country. There is no Journall but sithence E.

21 Ed. 4. fol.

46.

6. time, and that is a remembrance or memorial, as 12 H. 4. 23. *Commons in Parliament, ne sent Judges.*

The whole Parliament is one corporate Body, consisting of the Head and three Estates: the Court is only there where the *Consilium & tractatus* is, where the consult and treaty is with the King, which is in the House of Lords only.

The House of Commons claim not to examine upon Oath any Man; no Court can be without a power to give an Oath, Courts Baron, Court of Pipowders, County-Court, may and do give Oath, no Court can be without a power to try, no tryal can be without Oath; and therefore the House of Commons not claiming power to give an Oath, can bring no matter to tryal, and consequently can be no Court.

14 H. 8. 3.

36 H. 8.

Dyer. 60.

4 pars. Inst.

cap. 1.

The behaviour of the Commons at a conference with the Lords; the Commons are always uncovered, and standing, when the Lords sit with their Hats on, which shews they are Colleagues in judgment; for fellow-Judges owe no such Reverence to their Companions.

When

When was ever Time imposed by the House of Commons estreated in the Exchequer? The ejecting of a Member who hath sitted, is against the Law: for they cannot remove a man out of the House unduly returned, much less a man returned duly.

By these Laws it appears, that if any undue return be made, the person returned is to continue a Member, the Sheriffs punishment is 200 l. one to the King, another to the party that is duly elected, Imprisonment for a year without Bail or Mainprise; and that person who is unduly returned, shall serve at his own charge, and have no benefit at the end of the Parliament, by the Writ *De solutione feudorum Militum, Civium & Burgensium Parliament*. And the trial of the validity of the return, is to be before the Justices of the Assizes in the proper County, or by Action of Debt in any Court of Record. This condemns the Committee for undue Elections, which hath been practised but of late times: for besides these Laws, it is against a Maxim in the Common-law, an Averment is not receivable against the return of the Sheriff, for his Return is upon Oath, which Oath is to be credited in that Suit wherein the Return is made. 3 E. 4. 20. 5 Ed. 4. 41.

The said Statutes condemn and make those Members no Members, which were not reliant in the Country and Boroughs, for which they were elected, at the time of the Test of the Writ of the Summons of the Parliament, and any abusive practice of late times to the contrary, is against the Law, and ought not to be allowed.

Affault upon Parliament-men.

If a Parliament-man, or his Menial-servant be assaulted, beaten, or wounded in the Parliament-time, Proclamation shall be made where the Deed is done, that the Offender shall render himself to the King's Bench, within a quarter of a year after Proclamation made, and the Offence there to be tried: for default of appearance, the Offender is declared attainted of the Misdemeanour, and it is accorded that thereafter it be done likewise in the like case. 5 Ed. 4. c. 6. 11 H. 6. c. 11.

Serving of Process upon a Lord of the Parliament punished in the Lord's House. *Bogo de Clare*, 18 E. 3. 4. pars Inst. fol. 24. 10.

Serving of Process upon *Thornaby*, inquired of in the Chancery, and there the Offenders were convicted. *Thornaby's case*, Clerk of the Parl. *ibid.* 10. E. 3.

The Premises prove, that breaches of Privilege of Parliament may be punished elsewhere than in Parliament.

Upon all this discourse, it is easie to discern what fruits may be expected from this Parliament, continuing as long as the two Houses please; and that there is no safety for this Common wealth, but by the Observations of their ancient Franchises, Customs and Laws.

Conclusion.

If say again, that without an Act of Oblivion, a gracious general Pardon from His Majesty, the Arraies of the Souldiers paid, a favourable regard had to tender Conscience, there will be neither Truth nor Peace in this Land, nor any man secure of anything he hath.

Apology for the Army,

Touching the Eight *Quares*.

THese treasonable and insolent *Quares* make the Army the Houses Subjects, and not the King's. *None by the Laws of this Land can in this Kingdom have an Army but his Majesty.*

Bract. f. 118.
Stamf. f. 2.

It appears, the Army doth now evidently perceive that they were misled by the specious pretences of *Salus populi*, the maintenance of the King's Honour and of the maintenance of the Laws of the Land, and Liberties of the Subject, to take up Arms against their natural Liege Lord and Sovereign the King: The People is the Body, the King is the Head; was the Body safe when the Head was distressed and imprisoned? For Laws and Liberties have not the prevailing Party in the Two Houses destroyed above an hundred Acts of Parliament, and in effect, *Magna Charta*, and *Charta de Foresta*, which are the common Laws of the Land? Doth Excise, the Fifth, and Twentieth parts, Meal-money, and many more Burthens which this Land never heard of before, maintain the Liberties of the People? You and that Party of the Two Houses made the Army by several Declarations, before Engagement, believe that you would preserve the King's Honour and Greatness, the Laws and Liberties of the People: The Army and the whole Kingdom now *Facta vident*, see your Actions, and have no reason longer to believe your Oaths, Vows and Declarations; and since that Party in the Two Houses refuse to perform any thing according to their said Oaths, Vows and Declarations; the Army and

Mag. Chart.
c. 1. & ult.
All the Act
concerning
the King,
Church and
Churchmen.
25 Ed. 1. c. 1.

the Kingdom may and ought, both by your own Principles and the Laws of the Land, to pursue the ends for which they were raised. And so your first *Quære* is resolved; whereby it is manifest, that specious pretences to carry on ambitious and pernicious Designs, fix not upon the Army, but upon you, and the prevailing Party in both Houses.

The solution of the second Quære.

3 par. Inst.
E. 12. 39 Eli.
1 Jac. ibid. 3.
& 3 E. 6. c. 2.
11 H. 7. c. 1.

The Army, to their eternal Honor, have freed the King from imprisonment at *Holmby*. It was High Treason to imprison his Majesty: to free his Majesty from that imprisonment was to deliver him out of Trayterous hands, which was the Army's bounden duty, by the Law of God and the Land. That Party refused to suffer his Majesty to have two of his Chaplains for the exercise of his Conscience who had not taken the Covenant; free access was not permitted; Doth the Army use his Majesty so? all men see that access to him is free, and such Chaplains as his Majesty desired are now attending on his Grace: Who are the guilty persons? The Army, who in this Action of delivering the King, act according to Law, or the said Party who acted Treasonably against the Law? Who doth observe the Protestation better, they who imprison their King, or they who free him from prison?

That this Army was raised by the Parliament, is utterly false: The Army was raised by the two Houses upon the specious pretence of the King's Honour, Common Safety, and the Preservation of Laws and Liberties; which, how made good, hath been shewed before, and all the People of the Kingdom do find by wofull experience.

The two Houses are no more a Parliament, than a Body without a Head a Man. The two Houses can

can make no Court without the King; they are no Body corporate without the King; they all Head and Members, make one corporate Body. And this is so clear a Truth, that in this Parliament, by the Act of 17 Car. it is declared, That the Parliament shall not be dissolved or prorogued but by Act of Parliament: but the two Houses may respectively adjourn themselves. Two Houses and a Parliament are several things, *Cuncta fidei vera faciunt*; all circumstances agree to prove this truth: Before the *Norman* Conquest, and since, to this day, the King is holden *Principium, Caput & Finis*; that is, the Beginning, Head and Chief end of the Parliament, as appeareth by the Treatise of the manner of holding of Parliaments made before the *Norman* Conquest; by the Writ of Summons of Parliament, whereby the Treaty and *Parlet* in Parliament is to be had with the King only, by the Common Law, by the Statute Law, by the Oath of Supremacy taken at this, and every Parliament, it doth manifestly appear, that without the King there can be no colour of a Parliament.

How many Votes have they revoked in one Session, yea, and Bills? Was there ever the like done? Nay, is not the constant course of Parliaments violated and made nothing thereby? They are guarded by armed men, divide the publick Money among themselves, and that party endeavours to bring in a Foreign Power to invade this Land again. If they be no Parliament, as clearly they are none without his Majesty, they have no privileges, but do exercise an arbitrary, tyrannical and unreasonable Power over the people.

By the Law of the Land, when Treason or Felony is committed, it is lawfull for every Subject, who suspects the Offender, to apprehend him and to secure him so that Justice may be done upon him according to the Law.

14 H. 8. 3.
36 H. 7. Diet
60. 4 pars
Instir. p. 133
12, 14.
16 R. 2. c. 1.
5 Eliz. c. 2.
17 Carol.
The Act for
the continu-
ance of this
Parliament.
4 par. Inst.
p. 18.
4 par. Inst.
P. 4, 9.
5 El. c. 1, 2.

7 E. 4. 101
8 E. 4. 3.
9 E. 4. 27.
4 H. 7. 18.
27 H. 8. 23.

You say, the disobedience of the Army is a sad publick precedent, like to conjure up a Spirit of universal disobedience. I pray object not that conjuring up to the Army, whereof you and the prevailing Party in the Houses are guilty, who conjured up the Spirit of universal disobedience against his Majesty, your and our onely supreme Governour, but you, and that Party in the two Houses, and even then when the House of Commons were taking and did take the said Oath of Supremacy: For the Covenant you mention, it is an Oath against the Laws of the Land, against the Petition of Right, devised in *Scotland*, wherein the first Article is, to maintain the reformed Religion in the Church of *Scotland*: and certainly there is no Subject of the *English* Nation doth know what the *Scottish* Religion is. I believe the Army took not the Covenant. No man by the Law can give an Oath in a new case without an Act of Parliamente; and therefore the Imposers thereof are very blameable, and guilty of the highest Crime.

The Writer of these *Queres* seems to profess the Laws; let him declare what Act of Parliamente doth justifie the tendring, giving, or taking of the said Oath: he knoweth there is none, he knoweth that all the parts of it are destructive to the Laws and Government; to maintain which the Law of Nature and the Law of the Land had obliged them. The Oath of the Covenant makes the Houses supreme Governours in Causes Ecclesiastical; the Oath of Supremacy makes the King so: and yet both taken by the same persons, at the same time. What credit is to be given to persons who make nothing of Oaths, and contradict themselves? How do the Covenant and the Oath of Supremacy agree? How do their Protestation and the Covenant agree? How do their Declarations and Oaths agree? *The Lord be mercifull to this Land for these Oaths.*

It

2 par. Coll.
11. Ord.
p. 813.
3 par. Inst.
fol. 65.
Petition of
Right, 3 Car.
2 par. Inst.
119.

Mag. Chart.
c. 1. & ult.
Articuli cler.
ri, and many
other
Statutes.
16 E. 4. 10.

It is a sad thing to consider, that so many Gentlemen, who profess the Laws, and so many worthy men in both Houses, should be so transported as they are, knowing that the Laws of the Land from time to time, and in all times, are contrary to all their actions, and that they yet should amuse themselves and the People with the word Parliament without the King and with the Covenant; whereas they know they are no Parliament without his Majesty; and the *English-men* throughout the Kingdom should swear a Covenant to preserve the reformed Religion of *Scotland*, in Doctrine, Worship, Discipline and Government, which they do no more know then the Doctrine, Worship, Discipline and Government of *Prestor John in Ethiopia*; if they consider it, they cannot but discern that this is a high, desperate and impious madness.

Be wise in time: Without the King and the Laws, you will never have one hour of safety for your Persons, Wives, Children or Estates. Be good to your selves and to your Posterities; apply your selves to be capable of an Act of Oblivion, and of a general Pardon, and to be able and willing to pay the Souldiery, and to allow a reasonable Liberty for mens Consciences; and God will bless your Endeavours: and the People (to whom you are now very hatefull) will have you in better estimation.

The third Quære is thus answered.

You resemble the Army to *Jack Cade* and his Complices, and you cite the Act of Parliament of 31 *Hen. 6. cap. 1.* And that it may appear who acts the part of *Jack Cade*, you and that Party in the two Houses, or the Army; I think it necessary to set down the said Act in words at length as followeth.

First, Whereas the most abominable Tyrant, horrible, odious and arrant false Traytor, *Jo Cade*, calling and naming himself sometime *Mortimer*, sometime Captain of Kent, which name, fame, acts and fates are to be removed out of the speech and minds of every faithfull Christian man perpetually, falsly and traitterously purposing, and imagining the perpetual destruction of the King's said Person, and final subversion of this Realm, taking upon him Royal Power, and gathering to him the King's People in great numbers, by false subtile imagined language, and seditiously making a stirring Rebellion and Insurrection, under colour of Justice, for Reformation of the Laws of the said King, robbing, stealing and spoiling great part of his faithfull people. Our said Sovereign Lord the King considering the premises, with many other which were more odious to remember, by the advice and consent of the Lords aforesaid, and at the request of the said Commons, and by authority aforesaid, hath ordained and established, that the said *John Cade*, shall be reputed, had, named and declared a false Traytor to our Sovereign Lord the King; and that all his Tyranny, Acts, Fates and False Opinions shall be voided, abated, nulled, destroyed and put out of remembrance for ever; and that all Indictments, and all things depending thereof, had and made under the power of Tyranny shall be likewise void, annulled, abated, repealed, and holden for none: and that the blood of none of them be thereof defiled nor corrupted, but by the authority of the said Parliament clearly declared for ever: and that all Indictments in times coming, in like case, under power of Tyranny, Rebellion and Stirring had, shall be of no record nor effect, but void in Law; and all the Petitions delivered to the said King in his last Parliament holden at Westminster, Novemb. 6. in the 29. of his reign, against his mind, by him not agreed, shall be taken and put in oblivion,

out of remembrance, undone, voided, annulled, and destroyed for ever, as a thing purposed against God and Conscience, and against his Royal Estate and Preeminence, and also dishonourable and unreasonable.

Now we are to examin who hath trod in the steps of *Jack Cade*, you and the present prevailing Party of the two Houses took upon them, and do take all the Royal Power in all things; so did *Jack Cade*, as appears by the said Act; the Army doe not so: They who imprison the King purpose to destroy his person (our imprisoned Kings always * fared so) *Jack Cade* did likewise so purpose: The said Party in the two Houses made a stirring under colour of justice for reformation of the Laws; so did *Jack Cade*. The Army doe not so, but desire that the Laws should be observed: *Jack Cade* levied War against the King: The Army preserves him: *Jack Cade* died a declared Traytor to his Sovereign Lord the King: This Army might have lived to have the glorious true Honour of being Restorers of their King.

Simon Sudbury, Archbishop of *Canterbury*, was murdered by *Jack Straw*: *William Laud*, Archbishop of *Canterbury*, was likewise murdered by that Party of the two Houses, for that an Ordinance, by Law, cannot take away any man's life, and his life was taken away by an Ordinance of the two Houses, the Army had no hand in it. Many missed by *Jack Straw*, perceiving his trayterous purposes, fell from him: and as that was lawfull, just and honourable, so it is for this Army to adhere to their natural King, and so endeavour to settle the Kingdom again in the just Laws and Liberties thereof; *London* did then right worthily adhere to the King and the Laws, and not to *Jack Straw* and his specious pretences, and it is hoped they will now so doe: By this it appears, that the Gentleman's Discourse, touching *Jack Cade*,

E. 4.

fastens

* Edward, 1.
Henry, 6.
Richard, 2.

25 Ed. 3. 4.
28 Ed. 3. 3.
Petition of
Right.

fastens altogether on his Party : and cleareth the Army.

To the Fourth, which is resolved thus.

F.N.B. 159.
9 E. 4. 20.
28 H. 6. 27.
23 Eliz.
Dy. 1, 369.

The Arrears of the Army (howbeit it is the least thing they look after) yet it being not paid them, it is by the Law of the Land a sufficient cause to leave and desert that Party in the Houses : A person who serves in any kind, and is not paid his wages, the desertion of that service is warrantable by the Laws of the Land : You say, the Houses will reform all things when the Army doth disband : Who will believe it ? Will any believe that the settling of the Presbytery will doe it ? Will any believe that his Majesty will pass the Propositions sent to Him to *Newcastle* ? Will any man believe that this Kingdom will ever be quiet, without his Majesty and the ancient and just Laws ? Can the Members of the Army conceive any of them to be safe in any thing without a Pardon from his Majesty ? Have they not seen some of their Fellows hanged before their eyes, for actions done as Souldiers ? Shall the Kingdom have no account of the many Millions received of the publick Money ? Will the Members of the Houses accuse themselves ? Shall private and publick Debts be never paid ? Shall the Kingdom lie ever under burthens of Oppression and Tyranny ? There is no visible way to remedy all these Enormities, but the Power of the Army.

To the Fifth, which is solved thus.

The Kingdom hath better assurance of Reformation from the Army than from the Houses, for that, in their Military way, they have been just, faithfull and honourable, they have kept their words : That Party of the Houses have been constant to nothing but in dividing the publick Treasure among themselves, and in laying Burthens upon

upon the people; and in breaking all the Oaths, Vows and Promises they ever made: As the Army hath Power, so now, adhering to the King, all the Laws of God, Nature, and Man, are for them; their Armies are just and blessed; and the King is bound in Justice to reward his Deliverers with Honour, Profit, and meer Liberty of Conscience.

To the sixth Quære.

All the sixth *Quære* contains Calumnies cast upon the Army; the new Elections are against all the Laws mentioned in the Margin, and are against the Ejection of the old Members; and by this it may be judged, what a House of Commons we have. By the said Laws it appears, that if any undue return be made, the person returned is to continue a Member, the Sheriffs punishment is two hundred pounds, one to the King, and the other to the party that is duely elected; Imprisonment for a year without Bail or Mainprise; and that person who is unduly returned shall serve at his own charge, and have no benefit at the end of the Parliament, by the Writ *De solutione Militum, Civium & Burgensium Parliamenti*. And the trial of the falsity of the Return is to be before the Justices of Assizes in the proper County, or by Action of Debt in any Court of Record. This condemns the Committee for undue Elections, which hath been practised but of late times; for, besides these Laws, it is a Maxim of the Common-law, an Averment is not receivable against the Return of the Sheriff, for his Return is upon Oath, which Oath is to be credited in that Suit wherein the Return is made.

The said Statutes condemn Elections of such men who were not resiant and dwelt in the County or Boroughs for which they were returned; and any abusive practice of late times to the contrary is against the Law, and ought not to be allowed.

2 & 3 E. 6.
c. 2.
1 H. 7. c. 1.
Calvin's
case, 7 pars,
Cooke, f. 11.

11 H. 4. c. 1.
1 H. 5. c. 1.
8 H. 6. c. 7.
23 H. 6. c. 15.

2 E. 4. c. 20.
3 E. 4. c. 2.

To the seventh Quære.

The *Quarist* saith, that the Votes of the Independents in the Houses were arbitrary, exorbitant and irregular, and that they disposed and singred more of the common Treasure than others; That whole *Quære*, I believe, is false and slanderous; and the Author ought to make it good, or
 37 E. 3. c. 17. else to undergoe the Law of *Talion*; which is to suffer such punishment, failing of his proof, as the accused should in case of proof made.

To the eighth Quære.

This *Quære* is all minatory and threatning, and the contrary of every part is true: by the Deliverance of the King and Kingdom from the bondage of that Party in the two Houses by the Army, their Renown will be everlasting; they secure themselves, they content and please the Kingdom, City and Countrey, as appears by their confluence to see his Majesty and the Army, and their Acclamations for his Majestie's safety and restitution; all which doth evidence to every one of the Army, how acceptable the Intentions of the Army are to the people of this Land, who have been so long inthrall'd.

Sir *Tho. Fairfax*, let your Worthiness remember your extraction and your Lady's, by the grace and favour of the Prince, to be in the rank of Nobility. Remember what Honour and Glory the present age and all posterity will justly give to the Restorer of the King to his Throne, of the Laws to their strength, and of the afflicted People of this Land to Peace: Let the Colonels and Commanders under you, and likewise your Souldiery, rest assured, that they shall not onely share in the Renown of this Action, but also shall have such Remuneration as their haughty courage and so high a vertue doth deserve. This his Majesty can
 and

and will doe, the Houses neither will nor can: and God bleſs you all and proſper you.

I Conclude all as I always have done: without an Act of Oblivion, a general Pardon, the Arrears of the Souldiery paid, and a regard to Liberty of Conſcience, this Kingdom will certainly be ruined.

Judge Jenkins's Plea delivered into the Earl of Manchester, and the Speaker of the Houſe of Commons, ſitting in the Chancery at Weſtminſter: which was read by their command in open Court, the 14 of February, 1647. and there avowed by David Jenkins, Priſoner in Newgate. Printed in the year 1648.

I Have been required to appear in the Chancery the twelfth of this inſtant February, before Commissioners appointed by the two Houſes for the keeping of their Great Seal, and managing the Affairs of the Chancery.

I cannot, nor ought, nor will ſubmit to this power; I am a Judge ſworn to the Laws. The Law is, Firſt, That this Court is *Coram Rege in Cancellaria*: Secondly, The Chancellor or Keeper of the Great Seal is by delivery of the Great Seal to him by the King, and by taking of an Oath:

4 par. Inſtit.
fol. 79.
8 H. 4. f. 5.
9 E. 4. f. 15.

The Oath followeth in theſe words:

1. Well and truly to ſerve our Sovereign Lord the King, and his people, in that Office.

4 par. Inſtit.
fol. 88.
10 R. 2. rot.
Parl. num. 8.

2. To doe right to all manner of people; poor and rich, after the Laws and Uſages of this Realm.

3. Truly to counſel the King, and his Council to conceal and keep.

4. Not to ſuffer the hurt or diſheriting of the King, or that the Rights of the Crown be decreaſed by any means, as far as he may let it.

5. If

5. If he may not let it, he shall make it clearly and expressly to be known to the King with his advice and counsel.

6. And that he shall doe and purchase the King's profit in all that he reasonably may, as God him help, and the contents of God's booke.

Declar. 27.
Jan. 1637.

The said Commissioners, among others, have imprisoned their King, have declared to the Kingdom that they will make no Addresses or Applications to him, nor receive any from him.

Articul. sup.
chartas, c. 5.

Have counterfeited a new Great Seal, and after destroyed the true old Great Seal which belonged by the Law to the King's custody.

These Commissioners have had no Seal delivered to them by his Majesty, have taken no such Oath, or full ill keep it, and for these evident reasons grounded upon the fundamental Laws of this Land, these Commissioners have neither Court, Seal, or Commission, and therefore I ought not against the Laws, against my knowledge, and against my Conscience, submit to their power.

To affirm that they maintain the King's Power and Authority in relation to his Laws (as they often doe) and restrain onely his Person, is strange.

Mr. Solicitor
p. 27.

They must be remembered that the House of Commons this Parliament gave in charge to Mr. Solicitor upon the prosecution of the Bill of attainder against the Earl of *Strafford*, to declare the Law to be, that *Machination of War against the Laws or Kingdom, is against the King, they cannot be severed.*

Mr. Pym,
p. 16.

Mr. Pym had in charge likewise upon the same prosecution to declare, *That the King and his people are obliged one to another in the nearest relation, he is a Father, and the child in Law is called, Pars Patris, he is the Husband of the Common-wealth, they have the same interests, they are inseparable in their condition be it good or evil; he is the Head, they are the Body; there is such an incorporation as cannot be dissolved*

dissolved without the destruction of both. This agrees with our Laws and the Law of this Land: In that argument of Mr. Solicitor, and discourse of Mr. Pym, directed by the House of Commons, are contained the true Rights, Liberties and Laws of the People, deduced from our Ancestors in all ages, and wherein there is no line or word but is agreeable to the Laws, and is a necessary and usefull book to be perused and followed; which Book was published by Order of the House of Commons. If the doctrine of that book had been followed, we had not been so miserable as we are neither had these great evils ensued, for the which the Land mourns.

20 H. 7. f. 7.
8 H. 7. f. 12.
1 E. 5. f. 3.
4 E. 4. f. 25.
5 E. 4. f. 29.

In this month of *February*, six years now past, the onely difference between his Majesty and the prevailing Party in both Houses was touching the Power of the *Militia*, which in plain *English* is, Power over Sea and Land: this was the sole Quarrel: the King and his Progenitors have had it in all times, the Laws have fixed it upon them; they have used it for the Weal of the People: none of the Subjects ever had it or claimed it; the Laws deny it them; for the time they have had it, our Pressures have been miserable.

Collect. of
Ordinances,
1 part, f. 66,
67, 81.

His Majesty hath a numerous Issue, and so had his Father: Many great Persons of *England* and *Scotland* are of the Bloud Royal, and all the Kings of *Christendom* are of the same Bloud, so long as the Laws last, or any of the said Persons or their Descendants be living, this People shall have neither peace nor profit, but all the confusions that are imaginable will attend them.

And therefore (at length) be good to your selves, restore our King, receive from him an Act of Oblivion, a general Pardon, Assurance for the Arrears of the Souldiery, and meet Satisfaction to tender Consciences.

By *David Jenkins*.
Prisoner in *Newgate*.

February 12.

1647.

The

The Answer of Judge Jenkins to the Imputation put upon his Plea in Chancery: which was read in open Court, the 14 of Febr. 1647. And avowed by David Jenkins, prisoner in Newgate. Printed in the year 1648.

I Have no disposition, nor ever had, to be known by any publick Writing; these miserable Times, which fill many mens mouths, and most mens ears with notorious Untruths, thereby to blast and destroy the King's Sacred Majesty, his Laws and Government, and to bring in a Confusion, enforce me at this time (who formerly have written nothing but for the publick) to let the World know how unjustly the Pamphleter of this week, licensed by our Reformers, hath traduced me touching a Suit commenced in their Court of Chancery against me, by one Mr. ~~Ernest~~ ^{Ernest} a Wiltshire Gentleman, touching the Estate of one Mr. Thomas of Glamorganshire: the truth whereof is as followeth:

Mr. Thomas, whose Father and my Grandfather were two Brothers, about seventeen years past made his Will, and declared by the same his Son (being then of very tender years) a Ward to his Majesty, and made him Executor, and my self, during his minority, (referring to his Wardship) to administer his Estate personal and testamentary, and to be accountable to his Son when he came to age: And seventeen years sithence the Father died.

This Estate consists in a Stock of Sheep, so disposed by me as the number are yet continued, and for the number and condition, they were, at their delivery back to be made as good by those persons who had the charge of them as they were when they were received.

The rest of the Estate (for any considerable part)

part) was in Morgages of Land, forfeited in the life of my young Cofin *Thomas* for many of them, and many absolutely purchased by me in his name, in his life time, for the which I am not yet paid.

The Land descended, and ought, upon Sir *Edward Thomas*, my Cofin's Heir at Common Law; so that Mr. *Ernely*, the Plaintiff in *Chancery*, hath no colour for the Land: For my young Cofin dyed without Issue about 17 years old, and could not dispose of the Inheritance of any Land by any pretended Will: The Stock of Sheep remains, if the Plaintiff and the *Reformers* have not plundered them: For the Money, it came all to the Court, it was to satisfie the King for the Marriage.

The colour the Plaintiff hath is this; After the death of my old Kinsman, Mr. *Thomas*, by undue means, the young Gent. was married to Mr. *Ernely's* Daughter, in a way of Ravishment, being both children, without one penny paid, or consent of Friends or Kindred; for the which, a Suit of Ravishment depended against Mr. *Ernely* and others in the Court of *Wards*.

The young Gentleman died about 17 years of age, sithence these confusions without Issue; and some hours before my young Cofin's death (who died of a pestilent Fever) Mr. *Ernely* pretends a Will made by him, and that he made his Wife (Mr. *Ernely's* Daughter) his Executrix: His said Wife dies soon after, and is pretended to make a Nuncupative Will, and to make her Father (Mr. *Ernely*) her Executor, and so pretends as Executor of an Executor of an Executor: which pretended Wills, he saith, he hath proved in the Courts of his Friends the *Reformers*.

Whether such Wills were made or no, must receive an equal examination, and of what validity they are, being pretended to be made by children
in

in extremis, if made at all? And whether an Executor of an Executor of an Executor can maintain an account by the Law of the Land? And whether (I being Executor during the Minority, *viz.* the Wardship) my young Cousin could make such a Will as is pretended; he being no Executor till his full age.

7 H. 6. 5.
23 E. 4. 24.

The Age touching Wills, the Law of this Land determines to be 21 years, and before that Age at Common Law an Use could not be devised. For Wills touching Goods and Chattels, our Law for many ages hath left the same to the decision of the Civil and Canon Laws; in the Bishops Courts; That Law, (as *Justinian* hath it in the second Book of his *Institutions*, the 10. chap.) is, *Impuberi non licet testari*: this *pubertas* begins at 14. it is *plena pubertas* at 18. years of age: The question is, whether this *in testandi* is in *pubertate plena*, or *pubertate incepta*: *Pigot's Case*, 5. part of *Cooke's Reports*, the Doctors affirmed, that 17 years of age was a full age as to an infant Executor to dispose of Goods: this opinion hath been by others since denied. Sir *Edward Cooke*, 1. part *Instit.* §. 123. saith, He must be 10. which is the time of *plena pubertas*: 2 H. 4. 12. an infant of 8 years of age may be a Deseisor. Sir *John Dodderidge*, in his Book called, *The Office and Duty of Executors*, which they say is his, and it is a learned and laborious *Treatise*, fol. 347. delivers, that this opinion of 17 years, for that ability in an infant, hath been reported otherwise: this latter opinion comes nearer the Common Law; and the Statute Law of the Land: which Common Law, and Statute Law gives infants no power by Deed or Will to make any disposition of any thing they have, before they be 21 years of age.

It seems also more reasonable, because infants at 18 years have, by the intendment of Law, as they grow in years, more use of reason to discern what

what is fit for them to doe and act. And for a meer stranger to sue in a Court of Conscience, who pretends by such Wills of infants (the infant Husband being ravished) against the will of the kindred of the deceased, who died six years sithence without issue, (being 17 years of age) and that any part of his part of his Estate should go that way by a course of equity, unless the Law be for Mr. *Ernely*, who paid not a penny with his Daughter, and who would have the Husband of his Daughter bring him a Portion, by his pretended Title of an Executor of an Executor of an Executor, viz. of an infant the Executor of another infant, the Executor of a third person, seems very strange.

The said licensed Historiographer of theiss hath published the 16. of this present month of February, 1647. *That I, out of a desire to keep the Estate, have in a Suit in the Court of Wards, in my Cofin's life time, pleaded to the Jurisdiction of that Court.* It is true, I did so: for I conceived that the Estate would be unsafe in Mr. *Ernely's* hands, and I was willing to preserve it till my young Cofin came to be of age, to dispose of it himself, according as I was trusted.

The Law being, that the Court of Wards had no Jurisdiction over the personal Estate for then the Marriage was paid for to the King, and all due to the King ascertained. It is true that that was insisted upon as was just for to preserve the Estate from Mr. *Ernely*, who would have made what account he pleased to my Cofin at his full age: and this is the truth of that business.

That I declined not the Jurisdiction of the Chancery, to keep an Estate in my hand, appears, by my declining long sithence the power of the House of Commons to examin me; and the Reformers have all my Estate: What would Mr. *Ernely* have, when they (the Reformers) have all already,

or can have from me, if he had any colour?

I desire the good People of this City to observe what notorious Untruths their licenced Historiographers publish: to delude the People in this particular case, they publish;

1. That *the Suit against me is in the behalf of an Orphan*: Mr. Ernley (who is Plaintiff in their Court) is a *Wiltshire Gentleman*, at the least of 30 years of age, there is their Orphan.

2. That *I made a Speech to the people at the Hall door, That the questioning of me for what I had done for the King was illegal; and that the Judges had no power to try me, the King being absent*: Another notorious Untruth! For, I protest to God, all that I said was onely this, *God preserve the King and the Laws.*

3. It is said, *Thar, coming to the Bar, I stirred not my Hat*: All the Lawyers then at the Bar were uncovered; whereof I held it a Civility, to be also uncovered: and so I was, as they all know.

4. That *the Earl of Manchester should say, I received a great estate in Money of the Orphans estate*: As there is no truth in it, so it is most untrue that the said Lord so said (as all men present can testifie,) The truth is, they care not what they doe, what they say, what they swear, nor what they write: Witness the Declaration of a pre-ailing party of the House of Commons, of the 11 of this instant *February*; who, contrary to the Oath of Allegiance, the Oath of Sepremacy, the Protestation, their Solemn League and Covenant, their Declarations to make his Majesty a glorious King, fearfull to his Enemies, and beloved of his Subjects; and yet now, after 22 years, they would insinuate to the People, that this King, whom they have so much magnified, hath poisoned his own Father.

5. It is a publick notorious Untruth, That *the Parliament hath published a Declaration against the King,*

King, of the first of this instant February: whereas it is well known to be the Declaration of the prevailing Party Of the House of Commons only, without the Lords: and so they would make that prevailing Party only to be the Parliament.

* Their licensed Historiographer who published this, is called their Kingdoms weekly Post, from Wednesday Feb. 7. to Wednesday the 16. of Febr. 1647.

Let the People of *England* believe their five Senses, how it was with them seven years ago, and before, during his Majesty's Reign: how this Kingdom abounded then with Peace, Plenty and Glory, to the admiration and envy of other Nations: and now let them consider and judge by their Senses, since those men (whom nothing would satisfy, but all Power both by Sea and Land, which in truth is the Regality and Kingship, which they call the *Militia*) have usurped the said Power Regal, whether they have not by Impositions and Deceptions, diffused among the People by themselves and their Agents, brought a flourishing Kingdom to the most deplorable condition it now is in.

To the end that this Kingdom may not utterly be ruined, God incline their hearts to restore his Majesty, and for their own and their Posterities sake to receive from his Majesty an Act of Oblivion, a general Pardon, Assurance for the Arrears of the Souldiery, and meet Satisfaction for tender Consciences.

David Jenkins.

Judge Jenkins's Remonstrance to the Lords and Commons the 21. Febr. 1647. at Westminster.

I Desire that the Lords and Commons of the two Houses, would be pleased to remember, and that all the good People of *England* do take notice of an Order of the House of Commons this Session, for publishing the Lord *Cook* his Books: which Order they may find printed in the last leaf of the second part of his Institutes, in these words: viz.

Die

Die Mercurii, 12, Maii, 1641.

UPon Debate this day in the Commons House of Parliament, the said House did then desire, and held it fit, that the Heir of Sir Edward Cooke should publish in Print the Commentary upon *Magna Charta*, *The Pleas of the Crown*, and *The Jurisdiction of Courts*, according to the intention of the said Sir Edward Cooke; and that none but the Heir of the said Sir Edward Cooke, or he that shall be authorized by him, do presume to publish in print any of the foresaid Books, or any Copy thereof.

H. Elsigne, Cler. Dom. Com.

And I do further desire them that they would reade and peruse Mr. Solicitor *Saint-John*, and Mr. *Pym*, their Books published likewise in this Session, whose *Titles* are as followeth, viz.

An Argument of Law, concerning the Bill of Attainder of High-Treason, of Thomas Earl of Strafford.

At a Conference in a Committee of both Houses of Parliament.

• *By Mr. Saint-John, his Majestie's Solicitor General.*

Published by Order of the Commons House.

London, Printed by G. M. for John Bartlet, at the Sign of the Guilt-Cup, near S. Austin's-Gate, in Paul's-Church-yard, 1641.

And the Speech, or Declaration, of Joh. Pim, Esq; After the Recapitulation or summoning up of the Charge of High Treason, against Thomas Earl of Strafford, 12. April, 1641.

Published by the Order of the House of Commons.

London, Printed for John Bartlet, 1641.

I. Nothing

1. **N**othing is delivered for Law in my Books, but what the House of Commons have avowed to be Law, in Books of Law published by their Command this Session, and agreeable to the Books of Law, and Statutes of this Realm, in all former Times and Ages.

2. The supposed offence charged on me is against the two Houses, and none ought to be judges and parties, by the Law of the Land, in their own case.

3. I desire the benefit of *Magna Charta*, *The Petition of Right*, and other good Laws of this Land, which ordain that *all mens Trials should be by the established Laws, and not otherwise*: they are the very words of *The Petition of Right*.

An Ordinance of both Houses is no Law of the Land, by their own confession; and by the Books of the Lord Cooke, published by their Order, as aforesaid, this Session in six several places.

For *Sedition*, in my Books there is none, but such as they have authorized this Session, to be published and printed. To publish the Law is no Sedition. These Positions following I do set down for the Law of the Land in my Books, and they themselves have justified and avowed them as aforesaid; we agree the Law to be, and to have been in all Times in all the particulars following, as here ensueth.

1. *To imprison the King is High Treason.*

3 par. Instr.

2. (a) *To remove Councillors from the King by force is High Treason.*

P. 12.
(a) Mr. Solicitor, pag. 12.
3 par. Instr.

3. (b) *To alter the established Laws in any part by force is High Treason.*

pag. 9.
(b) Mr. Pim, p. 28.

4. (c) *To usurp the Royal Power is High Treason.*

3 par. Instr.
7, 10, 12, 16.
(c) 3 par. Instr.

5. † *To alter the Religion established is High Treason.*

P. 9.
† Mr. Solicitor, p. 3, 31, 36.

6. *To raise rumors and give out words to alienate the peoples affections from the King is High Treason*.*

* Mr. Solicitor, pag. 9.

7. To

7. To *seſs* *Souldiers* upon the people of the King-
dom, without their consent, is *High Treason*.

Mr. Solicitor,
pag. 9.

8. The Execution of *Paper Orders* by *Souldiers*,
in a *military* way, is *High Treason*.

Mr. Solicitor,
pag. 24.
4 par. *Inſt.*

9. To counterfeit the *Great Seal* is *High Treason*.

P. 125.

* Justice Hut-
ton's argu-
ment, fol. 39,
40.

10. * The Commission of *Array* is in force, with
none other.

† 4 par. *Inſt.*

11. † None can make *Judges*, *Justices*, *She-
riffs*, &c. but the King: The King makes every
Court.

2 par. *Inſt.*
Artic. super
Chartas, cap. 5.

12. The *Great Seal* belongs to the King's custo-
dy, or to whom he shall appoint, and none other.

* 1 par. Coll.
of Ordin. &
Cook ut supra.
† 4 p. *Inſt.* 25.

13. * *Ordinances* of one or both Houses, are no
Laws to bind the People.

14. † No *Privilege* of *Parliament* holds for
Treason, *Felony*, or *Breach* of the *Peace*, not for
twenty *Parliament* men, forty, nor three hun-
dred.

Mr. Solicitor
pag. 20.

15. To subvert the *fundamental Laws* is *High
Treason*.

Mr. Solicitor,
pag. 12, 27.

16. To levy *War* against the *Person* of the King
is *High Treason*.

Mr. Solicitor,
pag. 26.

17. To persuade *Foreriners* to levy *War* within
this Kingdom is *High Treason*.

Mr. Solicitor,
pag. 35.

18. To impose *unlawfull Taxes*, to impose new
Oaths, is *High Treason*.

Mr. Pim, p. 8.

19. The King can do no wrong.

Mr. Pim, p. 17.

20. It is a *pernicious Doctrin*, to teach *Sub-
jects*, they may be discharged from the *Oath* of
Allegiance. Then, What means the *Doctrin* of
both Houses, of the *Votes* of 11 of Feb. 1647.

Mr. Pim, p. 24.

21. A necessity of a mans own making, doth not
excuse him. The requiring and forcing of the
Militia, brought the necessity of *Arming* upon
the Houses.

2 par. *Inſt.* p. 9.

22. None can levy *War* within this *Realm* with-
out authority from the King, for to him onely it be-
longeth to levy *War*, by the *Common Law* of the
Land, to doe otherwise is *High Treason* by the
said

said Common Law. The onely quarrel was and is the *Militia*: for the which so much Bloud hath been spent, and Treasure.

23. No Parliament without the King, be it Principium, Caput, & Finis.

24. Presentment or Tryal by Jury is the Birth-right of the Subject.

M Solicitor
p. 70, 71.
4 part Inst.
p. 1, 3, 4.
4 part Inst.
p. 41, 356.

There is no doubt but that many in both Houses are free from this great sin, and that most of the prevailing Party had at first no intentions to proceed so far; but the madness of the People (who are very unstable, and so they will find them) and the Success of their Armies (having this great rich City to supply them with all accommodations) have so elated them, that the evil is come to this height.

For my self, to put me to death in this cause is the greatest honour I can possibly receive in this World: *Dulce & decorum est mori pro patria*. And for a Lawyer, and a Judge of the Law, to die, *Dum sanctis patria legibus obsequitur*; for obedience to the Laws; will be deemed by the good men of this Time, a sweet smelling sacrifice; and by this, and future Times, that I dyed full of years, and had an honest and honourable end. And posterity will take knowledge of these Men, who put some to death for subverting of the Laws, and others for supporting of them. &c.

Yet Mercy is above all the Works of God; The King is God's Vicar on Earth. In *Bracton*, *Bracton*, l. 3. who was a Judge in Henry the Third's time, you c. 9. p. 107. shall find the King's Oath, To shew Mercy, is part 4 part Inst. of it. You are all his children; say, and doe p. 342, 343. what you will, you are all his Subjects, and He is Stanford 99. your King and Parent: *Pro magno peccato paululum supplicii satis est patri*: and therefore let not the prevailing Party be obdurate, out of a desperation

ration of safety: That which is past is not re-
vocable: Take to your thoughts your Parents,
your Wives, your Children, your Friends, your
Fortunes, your Countrey; wherein Foreigners
write there is *Mira aeris suavitatis, & rerum om-
nium abundantia*: Invite them not hither; the
onely way to be free of their company will be,
*To restore His Majesty, and receive from Him an
Act of Oblivion, a General Pardon, Assurance for
the Arrears of the Souldiery, and meet Satisfaction
to tender Consciences.*

God preserve the King and the Laws:

DAVID JENKINS,

Prisoner in Newgate.

FINIS.
